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## MONGOLIAN BANKRUPTCY LAW: A COMPARATIVE ANALYSIS WITH THE AMERICAN BANKRUPTCY SYSTEM

*The Hon. Richard L. Bohanon\**  
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### I. INTRODUCTION

In September of 1998, a group of American bankruptcy judges, attorneys and professors traveled to Mongolia to conduct a series of seminars for Mongolian business and legal professionals and government officials in the field of bankruptcy law and procedures. The project was organized by the International Law Institute of Washington, D.C., under contract with the Ministry of Justice of Mongolia and financed through the World Bank.

The purposes of the seminars were to provide practical and technical guidance concerning bankruptcy law and procedures, in addition to paving the way for the development of the Mongolian economy in the international market.<sup>1</sup> Although this explanation might seem to be contradic-

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1. This is not to suggest that bankruptcy laws are the only legal element needed for economic systems which are transforming to a market economy. William E. Kovacic, *Designing and Implementing Competition and Consumer Protection Reforms in Transitional Economies: Perspectives from Mongolia, Nepal, Ukraine, and Zimbabwe*, 44 DEPAUL L. REV.

tory on its face, it must be realized that not only in modern commercial societies, but especially in developing economies, formal functioning bankruptcy procedures are essential.<sup>2</sup> This is so because of the need for stability in the markets of transitional economies.<sup>3</sup> Formal bankruptcy procedures help provide such stability.

The reason for this need underlies the fact that in any developing economy some enterprises survive and some do not.<sup>4</sup> Industries and products change. During these periods of flux, formal procedures for the handling of economic change must be in place. Otherwise, attraction of investment capital, into what is essentially a risky market,<sup>5</sup> will not occur or, at the least, be significantly limited.<sup>6</sup> A functioning bankruptcy system provides order in what would be a chaotic economic situation. Further, a formal bankruptcy system provides a mechanism for creditors and investors to minimize their losses and recover at least part of their investment when an enterprise fails. As Mongolia is a newly developing market economy in transition from a centrally planned economy, the lack of a functioning bankruptcy system would severely limit its ability to develop to its full economic potential.

Another difficulty with transition economies is that under centrally planned economies, there has been no standard mechanism for commercial entities to "exit" the market. Indeed, no need existed for such a mechanism since generating a profit and insolvency were not fundamental concerns of commercial organizations. In a market economy, these mechanisms are essential.

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1197, 1213 (1995) (acknowledging the need for, *inter alia*, new legislation involving banking, bankruptcy, business, contract, property and securities law). Indeed, in some instances, the World Bank and the International Monetary Fund have made the existence of bankruptcy laws a condition of obtaining international loans. Hon. Samuel L. Bufford, *Bankruptcy Law in European Countries Emerging From Communism: The Special Legal and Economic Challenges*, 70 AM. BANKR. L.J. 459, 464 (1996).

2. Shirley S. Cho, *Continuing Economic Reform in the People's Republic of China: Bankruptcy Legislation Leads the Way*, 19 HASTINGS INT'L & COMP. L. REV. 739 (1996); Hon. Sidney B. Brooks, *Russia's March to a Market Economy Assisted by New Bankruptcy Law*, 17 AM. BANKR. INST. J. 12 (June 1998). Mark E. Monfort, *Reform of State-Owned Enterprise and the Bankruptcy Law in the People's Republic of China*, 22 OKLA. CITY U.L. REV. 1067 (1997) (indicating that bankruptcy provisions might not be so important for transitional economies).

3. International Monetary Fund, *Policy Challenges Facing Transition Countries*, WORLD ECON. OUTLOOK, Oct. 1995, at 60 [hereinafter *Policy Challenges*].

4. Mark Homan, *Backs to the Wall*, BANKER, July 1995, at 53 (commenting on the corporate Darwinism of modern market economies).

5. *Policy Challenges*, *supra* note 3.

6. T.M. Rybezynski, *The Internationalization of the Financial System and the Developing Countries: The Evolving Relationship*, World Bank Staff Working Papers, No. 788, Series on International Capital and Economic Development, No. 4 (1986).

### A. Mongolia

Mongolia is a geographically large nation, landlocked and located between China and the Russian Federation with an area of over 1.5 million square kilometers, but it only has a population of 2.4 million people.<sup>7</sup> Since 1990, Mongolia has undergone difficult changes due to its nomadic cultural roots and its recent political history as a satellite of the former Soviet Union.

With the collapse of the Eastern Bloc in 1990, Mongolia's political system began its change from a totalitarian satellite to an independent nation. In July of 1990, the first relatively free elections were held in Mongolia.<sup>8</sup> In 1992, Mongolia adopted a Constitution which recognized human, economic, and political right, allowed private ownership of property, and acknowledged the separation of political power between the executive, legislative, and judicial branches of government.<sup>9</sup> The legislative branch of the Mongolian nation is called the Great Hural. The executive branch has a number of ministries, one of which is the Ministry of External Relations. This Ministry is responsible for, *inter alia*, developing foreign trade and investment in Mongolia.<sup>10</sup>

Mongolia has significant natural resources which include fluorspar, copper, gold, coal, nickel, zinc, oil and tungsten. Its primary exports are copper and gold. Unfortunately, limitations on infrastructure and transportation have slowed Mongolia's ability to capitalize on these resources. The backbone of Mongolia's economy is agriculture, focusing on herding and livestock. Mongolia is also a significant producer of cashmere. Mongolia's primary imports include petroleum products, industrial equipment and consumer goods. It also imports a significant portion of its food.<sup>11</sup>

### B. Mongolian Economic and Legal Environment

During the early 1990's, after the withdrawal of the Soviet economic subsidies, the Mongolian economy entered a period of rapid decline.<sup>12</sup> Numerous businesses were failing.<sup>13</sup> Despite the increased privatization

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7. *Introduction to Mongolia, Geography and Population* (visited Oct. 7, 1999) <<http://www.un-mongolia.mn/mongolia/intro.htm>>.

8. *Introduction to Mongolia, Politics* (visited Oct. 7, 1999) <<http://www.un-mongolia.mn/mongolia/intro.htm>>.

9. MONG. CONST. *infra* app. D.

10. *The Ministry of External Relations of Mongolia* (visited Oct. 7, 1999) <<http://www.MOL.mn/mer/MERMIS~1.HTM>>.

11. *Introduction to Mongolia, Economy* (visited Oct. 7, 1999) <<http://www.un-mongolia.mn/mongolia/intro.htm>>.

12. Sarangua Davaadorj, *Bankruptcy Law Training in Mongolia 1* (Sept. 7-28, 1998) (unpublished report to the World Bank, on file with the International Law Institute).

13. ITAR-TASS News Agency Moscow World Service, *Mongolian Factories Report-*

of property<sup>14</sup> and the development of the Mongolian stock market, the Zok, losses continued.<sup>15</sup>

The Mongolian government was able to stabilize the economy by 1995, by various means which included dismantling of the state monopolies, creating a private commercial sector and enacting a market oriented legal framework.<sup>16</sup> By 1995, over 500 foreign firms from 39 nations had begun investing in Mongolia and over \$100 million had been committed to be invested.<sup>17</sup>

Despite Mongolia's stabilization efforts, serious problems still exist. Economic growth did not begin until 1997, due at least in part, to the financial crisis of the time.<sup>18</sup> Unemployment is high and a third of the people live in poverty according to estimates from the World Bank.<sup>19</sup> Further, as of early 1999, 95% of all the outstanding loans were non-performing and numerous businesses were failing.<sup>20</sup>

Although Mongolia enacted an Insolvency Law in 1990, the Mongolian courts only heard approximately one dozen bankruptcy cases by 1997.<sup>21</sup> Essentially, the Mongolian Insolvency Law of 1990 was not functioning.<sup>22</sup> Given Mongolia's significant natural mineral resources and its need to develop confidence in the international market to attract investors, it was evident that the situation had to be addressed. Thereafter, Mongolia began the process of enacting more laws.<sup>23</sup>

In December of 1995, the World Bank<sup>24</sup> sponsored a seminar to ex-

*edly on Verge of Bankruptcy*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 20, 1993, at 1, available in LEXIS, News Library, Bbcswb file.

14. State Property Committee, *Background Information on Mongolian Privatization* (last modified Feb. 15, 1999) <<http://www.spc.gov.mn/mpbacknd.html>>.

15. At one point, the entire Mongolian foreign exchange reserves of \$90 million were lost by speculating on international currency markets. *Mongolia on the Brink* (CNN television broadcast, Jan. 5, 1995), available in LEXIS, News Library, CNN File, Transcript No. 751-6.

16. *Mongolia on the Road to Reform*, VIETNAM INV. REV., July 8, 1996, at 22, available in LEXIS, Market Library, Promt File (summarizing Ambassador CH Agvaandamdin).

17. *Id.*

18. World Bank, *Project Preparation - Mongolia, Banking (1)*, ASIA PULSE, Apr. 24, 1997, available in LEXIS, News Library, Apulse File.

19. Ch. Myagmartseren, *Development-Mongolia: An Overdose of Politics*, INTER PRESS SERVICE, Aug. 26, 1998, available in LEXIS, News Library, Inpres File.

20. Davaadorj, *supra* note 12.

21. *Id.* at 2; *Letter from Bat-Orgil Tourgold, World Bank Project Coordinator, Mongolia Ministry of Justice to William C. Plouffe, Jr.* (Aug. 9, 1999) (on file with author) [hereinafter *Letter from Bat-Orgil Tourgold to William C. Plouffe, Jr.*].

22. Davaadorj, *supra* note 12, at 2.

23. Shelley Dempsey, *Mongolia Moving Ahead with Legal Framework for Economy*, ASIA PULSE, May 12, 1997, available in LEXIS, News Library, Apulse File.

24. Assisting nations in the transformation from transitional economies to market economies is a fundamental purpose of the World Bank and the International Monetary Fund. Kim

amine the problems existent in the Mongolian economy and banking system. Ten months later, the State University of Mongolia conducted a study on insolvency in Mongolia. It was discovered that part of the reasons for the lack of enforcement of the bankruptcy code was the inadequacy of its provisions and the lack of understanding of bankruptcy procedures by the legal community.<sup>25</sup> In June of 1997, a delegation of Mongolian officials traveled to Washington, D.C. and met with several experts in bankruptcy law.<sup>26</sup> Their mission was to draft a new Mongolian Bankruptcy Law. The new law was subsequently enacted by the Great Hural and entered into force on November 12, 1997.<sup>27</sup>

However, just the enactment of the new code was not considered sufficient to address the problems in the Mongolian economy associated with commercial insolvency. The code also had to be functioning and enforced.<sup>28</sup> To this end, this project was created to train the Mongolian legal community in the procedures of administering the new bankruptcy code.

### *C. Project Organization and Financing*

In February of 1991, Mongolia became a member of the World Bank Group. The World Bank Group consists of five institutions: 1) the International Bank for Reconstruction and Development, 2) the International Development Association, 3) the International Finance Corporation, 4) the Multilateral Investment Guarantee Agency, and 5) the International Center for Settlement of Investment Disputes.<sup>29</sup> The overall mandate of the World Bank is to alleviate poverty. One of the ways it attempts to accomplish this goal is to aid in the development of the economies of less-developed nations. One of the World Bank lending operations currently operating in Mongolia is the Banking, Enterprise, and Legal Technical Assistance Credit (BELTAC) project. It is through this project which these seminars were funded.

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Reisman, *The World Bank and the IMF: At the Forefront of World Transformation*, 60 *FORDHAM L. REV.* 349 (1992); Irene A. Belot, *The Role of the IMF and the World Bank in Rebuilding the CIS*, 9 *TEMP. INT'L & COMP. L.J.* 83 (1995).

25. Davaadorj, *supra* note 12, at 2.

26. The experts were Sarangua Davaadorj, Esq., of the International Law Institute, Washington, D.C.; Eric Haythorne, Esq., of the World Bank, Washington, D.C.; and Henry Schiffman, Esq., Reston, Virginia. Telephone Interview with Henry Schiffman, Esq. (Aug. 8, 1999).

27. *BANKRUPTCY LAW [BANKR. LAW]* (Mong.) *infra* app. A.

28. Davaadorj, *supra* note 12, at 2.

29. The World Bank Group, *Mongolia, General Information* (visited Oct. 7, 1999) <<http://www.un-mongolia.mn/wbank/wbgroup.htm>>.

#### *D. Project Execution*

The training was organized into three parallel groups: one for judges, one for lawyers, and one for trustees. This was done as there was a limited amount of time for training and each group has distinct duties in a bankruptcy case which do not necessarily apply to other groups.

The training itself was conducted in stages. The first stage of training focused on the theoretical aspects of bankruptcy in both economic and legal perspectives. The second stage provided technical training in the mechanics of the bankruptcy law. The final stage of training required actual participation in simulations of bankruptcy reorganization proceedings. For the simulations, all of the participants (judges, lawyers, and trustees) were brought together to demonstrate the interrelationships between the legal personnel and the actual workings of a bankruptcy case.

A final element of the project involved feedback from the participants. Each participant was asked to provide substantive feedback concerning not just the training, but actual implementation of the bankruptcy law.

## II. MONGOLIAN BANKRUPTCY LAW

### *A. The Genesis of Mongolian Bankruptcy Law*

The original Mongolian Bankruptcy Law was written in 1990. It was enacted as one component in the transitional development of the Mongolian economy from a centrally planned economy to a free market. Because of difficulties in applying the law, a second, more comprehensive, Bankruptcy Law was enacted. An English translation of the current Mongolian Bankruptcy Law is included in this article as Appendix A.

### *B. Philosophical Basis of Mongolian Bankruptcy Law*

The Mongolian Bankruptcy Law is focused entirely on commercial entities. Indeed, a debtor is defined as an insolvent partnership, cooperative, company, or organization with the rights of a legal person.<sup>30</sup> The law does not provide for an individual to be a debtor.

This omission may have significant future effects on the development of individual entrepreneurship in Mongolia. Although the Mongolian Constitution acknowledges individual economic rights,<sup>31</sup> the Bankruptcy Law does not provide the same protections to individuals who are

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30. CIVIL CODE [CIV. C.] art. 21 (Mong.) *infra* app. C (defining a "legal person" as an organization which has separate property with powers to own, possess, use, and dispose of property and is able to acquire rights and incur liabilities and to sue and be sued whose main goals may include making a profit). *Id.* at arts. 75, 140, 149-51 (1994) (explaining the concept of an owner in Mongolian law).

31. MONG. CONST. *infra* app. D.

entrepreneurs as it does to commercial entities.<sup>32</sup>

From one philosophical perspective, This focus is understandable in that the primary purpose of the Mongolian Bankruptcy Law, at least at this point in the development of the Mongolian free market economy, is to address the macro-economic issues of attracting more international investment in Mongolia and to provide economic stability.<sup>33</sup> However, in the future, given the recognition of individuality in the Mongolian Constitution, the Mongolian Bankruptcy Law might need to be amended to protect individuals as well as commercial entities. This added protection would encourage more individual entrepreneurship.

Finally, in transition economies, it is vitally important to focus on rehabilitation of a debtor, rather than liquidation.<sup>34</sup> Liquidation, arguably, already informally exists in many legal systems which have basic provisions for the collection of debts, although the liquidation process is usually not orderly. In transitional economies, large numbers of enterprises may unnecessarily go into informal liquidation when, in fact, the presence of a formal rehabilitation procedure would prevent such occurrences. Such large scale failures would be devastating to transitional economies and can be prevented by the presence of formal bankruptcy procedures.

### *C. Overview of Mongolian Bankruptcy Law*

Even though Mongolia is a civil code nation, which traditionally places all procedural matters in one code, the Mongolian Bankruptcy Law, in addition to the substantive law, contains procedural elements.

The Bankruptcy Law of Mongolia involves three classes of parties: the debtor, the creditors, and the trustee. Each of these parties fulfill, essentially, the same functions as in the American bankruptcy system. However, it is important to note that in the Mongolian system, the debtor only includes commercial debtors: partnerships, cooperatives, companies, or non-governmental organizations. An individual cannot be a debtor.<sup>35</sup>

Under Mongolian law, a debtor is considered to be insolvent when it is unable to timely pay its debts with more than 10% of its capital.<sup>36</sup>

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32. Manfred Balz & Henry Schiffman, *Insolvency Law Reform for Economies in Transition — A Comparative Law Perspective*, BUTTERWORTHS J. INT'L BANK. & FIN. L. (Jan.-Feb. 1996) (discussing the eventual need for bankruptcy protection for individuals in transitional economies as the market expands) (on file, with the author).

33. For an interesting discussion of the macroeconomic issues facing transitional economies, see Ronald I. McKinnon, *Financial Growth and Macroeconomic Stability in China, 1978-1992: Implications for Russia and Other Transitional Economies*, 18 J. COMP. ECON. 438 (1994).

34. Balz & Schiffman, *supra* note 32.

35. BANKR. LAW art. 3. (Mong.) *infra* app. A.

36. *Id.* at art. 4.



Capital is defined as the difference between the total fixed and working assets and liabilities.<sup>37</sup>

Bankruptcy proceedings may be voluntary,<sup>38</sup> instituted by the debtor, or involuntary, instituted by a creditor.<sup>39</sup> Also, they may be instituted to either rehabilitate the debtor<sup>40</sup> or to liquidate its assets.<sup>41</sup>

Under a rehabilitation proceeding, plans can be proposed by any of the interested parties.<sup>42</sup> The proposed plans will be voted on by the creditors<sup>43</sup> and, if accepted by the creditors, either approved or disapproved by the court.<sup>44</sup>

If a plan is not approved by the court, then the debtor shall be declared bankrupt and its assets liquidated.<sup>45</sup> If a plan is approved, it will then be implemented under the supervision of the trustee.<sup>46</sup>

If the plan is completed, the proceeding will be dismissed and the debtor released from all further obligations.<sup>47</sup> If the plan is not completed, then the court declares the debtor bankrupt and liquidates its assets.<sup>48</sup>

Under a liquidation proceeding, the court declares the debtor bankrupt under one of four conditions: a request for rehabilitation was not filed with the court,<sup>49</sup> a plan was not submitted to the court,<sup>50</sup> a plan was not approved by the court,<sup>51</sup> or the implementation of the plan has failed.<sup>52</sup> Once the assets of the debtor have been sold to satisfy the claims, the debtor will cease to exist and be stricken from the State Register.<sup>53</sup>

Once a bankruptcy petition is filed with the court, the creditors are prohibited from taking certain actions with regard to the debtor. They cannot: obtain payments or services from assets of the debtor to be distributed even if the payments were ordered by a previous decision of the court, transfer the debtor's property to be distributed, transfer any obligation due the debtor to another or terminate the obligation to the debtor by

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37. *Id.* at art. 3.1.3.

38. *Id.* at art. 7.1.

39. *Id.* at art. 7.2.

40. BANKR. LAW art. 23. (Mong.) *infra* app. A.

41. *Id.* at art. 33.

42. *Id.* at art. 24.1.

43. *Id.* at art. 27.

44. *Id.* at art. 28.

45. BANKR. LAW art. 28.5. (Mong.) *infra* app. A.

46. *Id.* at art. 29.1.

47. *Id.* at arts. 32.3, 32.4.

48. *Id.* at art. 32.2.

49. *Id.* at art. 33.1.1.

50. BANKR. LAW art. 33.1.2 (Mong.) *infra* app. A.

51. *Id.*

52. *Id.* at art. 33.1.3.

53. *Id.* at art. 36.3.

off-setting it, or take any of the debtor's assets in pledge (*i.e.*, by lien<sup>54</sup>), increase any property to be pledged, or sell or dispose of any property which has been pledged.<sup>55</sup>

#### *D. Overview of Mongolian Bankruptcy Procedure*

Mongolian bankruptcy procedure is largely encompassed within the Bankruptcy Law. Those procedures which are not addressed in the Bankruptcy Law are to be executed according to the Mongolian Civil Procedure Code.<sup>56</sup>

The first procedural step is the filing of a voluntary petition by the debtor or an involuntary petition by a creditor.<sup>57</sup> On a voluntary petition, the court must make a decision within five days on whether the debtor is insolvent.<sup>58</sup> If the petition is involuntary, then the court has thirty days to determine if the debtor is insolvent.<sup>59</sup> In either case, the court may request additional documents to determine insolvency.<sup>60</sup> If the debtor is found to be solvent, then the bankruptcy case will be dismissed, but any other appropriate trials concerning the facts and circumstances will be conducted.<sup>61</sup>

If the court determines that the debtor is insolvent, it shall make a public announcement which includes the date and place of the first meeting of creditors and the procedure and date to submit claims, and the consequences for failure to submit a claim within the time allowed.<sup>62</sup> The first meeting of creditors must be scheduled within thirty days of the filing of the petition.<sup>63</sup> If the circumstances warrant, the court may also ap-

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54. CIV. C. art. 181(Mong.) *infra* app. C.

55. BANKR. LAW art. 21 (Mong.) *infra* app. A. But there are also limits on the debtor, who cannot modify or terminate existing contracts which involve ordinary course of business because of its insolvency. *Id.* at art. 22.1.

56. *Id.* at art. 2.2.

57. *Id.* at art. 5.1.

58. *Id.* at art. 5.2. The contents of a voluntary petition must include: financial statements for the last three years, a list of assets with an evaluation of each asset, a list of the names and addresses of each creditor and the amounts due each, a list of the names and addresses of each person who owes the debtor and the amounts due, and a list of the names and addresses of the owners or partners with unlimited liability. *Id.* at 7.1.

59. *Id.* at art. 5.3. The contents of an involuntary petition must include: a request to declare the debtor insolvent, the grounds which indicate that the debtor is insolvent, the obligations of the debtor and the amounts and dates they are due, and a request to rehabilitate or liquidate the debtor. *Id.* at art. 7.2.

60. BANKR. LAW art. 7.3 (Mong.) *infra* app. A.

61. *Id.* at art. 5.4.

62. *Id.* at art. 5.5. Generally, claims must be submitted within twenty one days from the date of the court's announcement. *Id.* at art. 15.1.

63. *Id.* at art. 8.1.

point a temporary trustee.<sup>64</sup>

The creditors, at the first session of their meeting shall propose a trustee to the court.<sup>65</sup> Within five days of the proposal, the court shall appoint the proposed trustee<sup>66</sup> if the trustee meets the requirements of law.<sup>67</sup>

At following sessions, the creditors have the power to, *inter alia*:<sup>68</sup> decide upon remuneration of the trustee, limit the powers of the trustee, discuss the financial condition of the debtor, file complaints with the court concerning the trustee and ask for the trustee's replacement,<sup>69</sup> approve a rehabilitation plan of the debtor by classes,<sup>70</sup> and supervise any such rehabilitation plan. All votes to take action by the creditors require a two-thirds majority.<sup>71</sup> Each creditor has voting rights equal to the percentage of its claim from the total amount of claims.<sup>72</sup> If there are more than seven creditors, a Board of Creditors may be established, with a minimum number of three creditors and shall consist of an odd number of members.<sup>73</sup> The rights and responsibilities of the Board shall be established by the creditors.

The trustee is responsible for administering the bankruptcy proceeding. The trustee's duties include: 1) calling and addressing meetings of creditors, 2) placing assets under seal, 3) inventorying assets and documents of the debtor and protecting them against loss, 4) examining the debtor and the debtor's transactions made before the bankruptcy petition was filed, 5) with the approval of the creditors, modifying or rescinding or canceling agreements made by the debtor, 6) opening financial accounts to administer funds involved with the bankruptcy proceeding, 7)

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64. *Id.* at art. 5.7.

65. BANKR. LAW art. 8.2 (Mong.) *infra* app. A.

66. *Id.* at 11.1.

67. To be a trustee: 1) a) the person must hold a degree in finance, economics, or law or b) must be a legal person who has the right and responsibility of offering professional advice or services in finance, economics, or law and 2) must not have a personal, financial, or economic interest in the activities of the debtor. *Id.* at art. 11.2. Conflicts of interest are defined as being a member of management of the debtor or a creditor or being an owner of the same (except in the case of being a shareholder of the debtor) or an individual creditor. It is also a conflict of interest for a trustee to be a family member of any person with a conflict of interest. *Id.* at art. 11.3.

68. *Id.* at art. 8.3.

69. The court has the power to replace the trustee. *Id.* at art. 12.3.

70. A vote on the plan shall be by the following classes: 1) secured creditors whose claims equal or exceed ten percent of the total value of all claims, 2) creditors with other secured claims, 3) employers who have concluded a labor agreement with the creditor and 4) all other creditors. BANKR. LAW art. 27.3 (Mong.) *infra* app. A. For a class to vote to accept a plan, a majority of the members of each class must vote for the plan. *Id.* at art. 27.4.

71. *Id.* at art. 9.2.

72. *Id.* at art. 9.1.

73. *Id.* at art. 10.1

with the approval of the creditors, concluding agreements on behalf of the debtor, 8) reporting on the debtor's activities to interested parties, 9) appraising the value of the debtor's assets, 10) hiring assistants, with the approval of the creditors, 11) selling the debtor's property in accordance with law, and 12) applying to the court for decisions.<sup>74</sup> The trustee is also empowered to distribute funds to satisfy claims.<sup>75</sup> However, the trustee's powers are not unlimited. The trustee is liable for any losses due to negligence or fraud.<sup>76</sup>

In the trustee's evaluation of the debtor's financial activities, there are some transactions which are void as a matter of law, allowing for the recovery of the property or funds. For example, those transactions which provide management or management's family assets of the debtor for less than equivalent value within a two year period prior to the filing of the bankruptcy petition are considered void. Those transactions which transfer any other assets of the debtor for less than equivalent value within a one year period are void. Those transactions for sales or services which allow a preference over others are void as are those transactions for the payment of debts if they are intended to and provide a preference for creditors over other creditors and which are concluded within 120 days of the date of the filing of the petition.<sup>77</sup> The trustee has the power to avoid these transactions.<sup>78</sup>

Within twenty days of his appointment, the trustee must submit to the court an initial report of his activities to include, *inter alia*: the transactions of the debtor, the causes and circumstances of the insolvency, the management of the debtor, the amount of claims for each creditor and the classes of the creditors, and recommendations for the rehabilitation or liquidation of the debtor.<sup>79</sup>

### 1. Proceedings in a Rehabilitation Case

In a rehabilitation case, the next procedural step is the submission of plans for rehabilitation of the debtor. Any interested party (debtor, creditors, or trustee) may submit a plan.<sup>80</sup> The proposed plans shall address, *inter alia*, the following issues: 1) retention or replacement of manage-

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74. *Id.* at arts. 12.1, 18 (concerning the trustee's authority to sell assets); *id.* at art. 20 (concerning the trustee's authority to modify or terminate executory contracts). The trustee may also ask the court to appoint experts. *Id.* at art. 13.2. All property in possession of the debtor at the time the court issues its decision of institution of bankruptcy proceedings becomes property of the estate. *Id.* at art. 17.

75. BANKR. LAW art. 35.1 (Mong.) *infra* app. A.

76. *Id.* at art. 12.2.

77. *Id.* at art. 19.

78. *Id.* at art. 20.1.

79. *Id.* at art. 13.1.

80. BANKR. LAW art. 24.1 (Mong.) *infra* app. A.

ment, 2) retention, transfer, or sale of assets and property, 3) classification of creditors as to the nature of the debt, 4) payment of claims of creditors, 5) continuation of contracts, and 6) duration of the plan.<sup>81</sup> However, they must be submitted within thirty days of the date that the trustee's initial report was filed.<sup>82</sup>

Once the thirty days have expired, the trustee must schedule, prepare and organize a meeting to discuss any plans that have been filed.<sup>83</sup> The date, place and agenda of this meeting will be publicly announced, along with the procedures to be employed at the meeting, and the meeting must occur within twenty days of the submission of the plan.<sup>84</sup> At this meeting, the creditors vote on the plans.<sup>85</sup> The court must then consider approval of the plan within twenty days of the date of the meeting.<sup>86</sup> If a plan is not submitted to the court, then the court shall declare the debtor bankrupt and issue a decree of liquidation.<sup>87</sup>

Approval of the plan by the court is mandatory if both two-thirds of the classes of debtors have voted to accept the plan and if the debtor could pay more to the creditors than if it was liquidated.<sup>88</sup> If more than one plan has been approved by the creditors, the court shall approve the debtor's plan, unless it does not meet the requirements of article 28.2 of the Mongolian Bankruptcy Law, in which case it shall approve the plan which is approved by the most disadvantaged class of creditors.<sup>89</sup>

Once the plan is approved, the trustee has the responsibility of implementing it. However, the court, in its discretion, may permit the debtor to perform this function.<sup>90</sup> Throughout implementation of the plan, the trustee is required to submit periodic reports.<sup>91</sup> During the course of im-

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81. *Id.* at art. 24. A plan cannot last longer than two years. *Id.* at art. 25. However, the trustee or the creditors may petition the court to extend it by six months if it appears that the debtor would be able to pay the claims of its creditors during the extension. *Id.* at art. 30.

82. *Id.*

83. *Id.* at arts. 26.1, 26.2, 27.1.

84. *Id.* at arts. 26.3, 26.4.

85. A vote on the plan shall be by the following classes of debtors: 1) secured creditors whose claims equal or exceed ten percent of the total value of all claims, 2) creditors with other secured claims, 3) employers who have concluded a labor agreement with the creditor and 4) all other creditors. BANKR. LAW art. 27.3 (Mong.) *infra* app. A. For a class to vote to accept a plan, a majority of the members of each class must vote for the plan. *Id.* at art. 27.4.

86. The court must grant its approval or disapproval within twenty days of the creditors' meeting when the plan was approved. *Id.* at art. 28.1.

87. BANKR. LAW art. 33.1.2 (Mong.) *infra* app. A.

88. *Id.* at art. 28.2.

89. *Id.* at arts. 28.3, 28.4.

90. However, the court, in its discretion, may permit the debtor to implement the plan, if the plan was proposed by the debtor. *Id.* at art. 29.2. But, the trustee shall retain some supervisory authority over the debtor.

91. *Id.* at art. 31.

plementation, either the trustee, the creditors, or the debtor may move the court to liquidate the debtor if it appears that the plan cannot be completed.<sup>92</sup> If implementation of the plan is not completed, then the court shall issue a decree of liquidation of the debtor.<sup>93</sup> Once the plan is completed, the proceeding will be dismissed and the debtor discharged from all further obligations.<sup>94</sup>

## 2. Proceedings in a Liquidation Case

Under a liquidation, the court shall declare the debtor bankrupt under one of four conditions: a request for rehabilitation was not filed with the court,<sup>95</sup> a plan was not submitted to the court,<sup>96</sup> a plan was not approved by the court,<sup>97</sup> or the implementation of the plan has ceased.<sup>98</sup> In a liquidation, the trustee shall inventory<sup>99</sup> and sell the assets<sup>100</sup> and then pay the claims in priority according to the following classification order: 1) claims for injury or death, 2) wages and expenses of the trustee, 3) for contracts concluded during any rehabilitation period, 4) secured claims, 5) unsecured claims, 6) wages and salaries, 7) court expenses, and 8) all other claims.<sup>101</sup>

Before the claims are paid, the trustee must submit a plan of allocation of the available funds.<sup>102</sup> The creditors have seven days to file an objection to the trustee's plan of payment, which the court must decide within twenty days.<sup>103</sup>

If there are insufficient assets from the sale to cover all the claims, then they shall be paid by the trustee according to their priority.<sup>104</sup> If there are insufficient funds to pay all the claims in one class, then the claims in that classification shall be paid *pro rata*.<sup>105</sup> The trustee has twenty days from the date of the approval of the plan to sell the assets of the debtor and distribute the funds to the creditors,<sup>106</sup> unless a complaint has been

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92. BANKR. LAW art. 29.5 (Mong.) *infra* app. A.

93. *Id.* at art. 32.2.

94. *Id.* at arts. 32.3, 32.4.

95. *Id.* at art. 33.1.1.

96. *Id.* at art. 33.1.2.

97. BANKR. LAW art. 33.1.2 (Mong.) *infra* app. A.

98. *Id.* at art. 33.1.3.

99. *Id.* at art. 34.

100. *Id.* at art. 35.

101. *Id.* at art. 35.5.

102. BANKR. LAW art. 35.2 (Mong.) *infra* app. A.

103. *Id.* at art. 35.3.

104. *Id.* at art. 35.6.

105. *Id.*

106. However, at the request of the trustee, the court may extend the time frame in which to sell the assets. *Id.* at art. 35.4.

filed concerning the plan, in which case he has forty days.<sup>107</sup> Once all of the funds have been distributed, the trustee must report to the court on the sale of the assets and the satisfaction of the claims.<sup>108</sup> Upon the completion of the liquidation, by order of the court, the debtor will be discharged from all debts,<sup>109</sup> unless it became insolvent intentionally.<sup>110</sup>

In all bankruptcy cases, any interested party has the right to contest a decision of the court. The complaint must be made within seven days and the court must decide the appeal within fifteen days. If the parties do not agree with the resolution of the complaint, they have the right to appeal within ten days to which a decision must be issued within thirty days. During the complaint and appeal process, the bankruptcy proceeding will be suspended until the issues are decided.<sup>111</sup>

### *E. Mongolian Banking Law*

Due to the difficulties experienced by the Mongolian economy in the transitional years since 1990, in addition to the laws of bankruptcy, Mongolia has also taken significant steps to regulate the banking industry.<sup>112</sup> Because of these difficulties, insolvency of banks is not addressed by the Mongolian Bankruptcy Law but, rather, by the Mongolian Banking Law. Thus, a brief overview of the relevant portions of the Mongolian Banking Law will be presented.<sup>113</sup>

Mongolia has a national bank: the Bank of Mongolia, which has significant powers and duties. Although the Bank of Mongolia does not interfere in the management of private banks,<sup>114</sup> it issues licenses to private banks<sup>115</sup> and has the authority to approve whether a private bank engages in, *inter alia*, the following activities: 1) purchasing, selling, depositing, and placing on deposit foreign currency, 2) conducting foreign exchange and transaction services and 3) issuing, buying, and selling securities.<sup>116</sup> If any private bank declares bankruptcy, its license will be revoked.<sup>117</sup>

As opposed to bankruptcy proceedings involving other commercial entities, bankruptcy proceedings involving banks are conducted by the Bank of Mongolia.<sup>118</sup> The decision to liquidate or restructure a private

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107. BANKR. LAW art. 36.1 (Mong.) *infra* app. A.

108. *Id.* at art. 36.2.

109. *Id.* at arts. 36, 37.1.

110. *Id.* at art. 37.2.

111. *Id.* at art. 6.

112. Letter from Bat-Orgil Tourgold to William C. Plouffe, Jr., *supra* note 21.

113. BANKING LAW (Mong.) *infra* app. B.

114. *Id.* at art. 5.

115. *Id.* at art. 17.

116. *Id.* at art. 6.

117. *Id.* at art. 24.

118. BANKING LAW art. 30 (Mong.) *infra* app. B.

bank is made by the shareholders and must have the consent of the Bank of Mongolia.<sup>119</sup>

If the private bank is to be restructured, then a conservatorship will be imposed.<sup>120</sup> In such a case, the Bank of Mongolia will publicly announce the conservatorship<sup>121</sup> and then appoint representatives to handle the affairs of the bank.<sup>122</sup> These representatives have, essentially, complete authority over the bank and its activities, resulting in the suspension of the bank's officers and shareholders authority.<sup>123</sup>

If the private bank is to be liquidated, then the Bank of Mongolia will place it in receivership.<sup>124</sup> A bank will be liquidated under the following conditions: 1) it is unable to conduct normal activities during a conservatorship, 2) it is unable to meet the demands of its depositors or pay its obligations, 3) its liabilities exceed its assets, according to prescribed calculations promulgated by the Bank of Mongolia, or 4) imminent occurrence of 1) or 2) above.<sup>125</sup>

Like a conservatorship, the Bank of Mongolia will appoint a receiver who has complete authority over the bank and the authority of the bank and its officers vests in the receiver.<sup>126</sup> The action must also be announced to the public and the customers of the bank.<sup>127</sup> However, certain parties (to include certain shareholders, creditors, and depositors) have the right to appeal the appointment of a receiver.<sup>128</sup>

The receiver has significant authority, including the inventorying of assets and property, procuring the return of the bank's assets and property, the sale of assets and property, and the settlement of claims against the bank.<sup>129</sup> Essentially, the receiver has the same powers and duties as a trustee in bankruptcy.

### III. COMPARATIVE ANALYSIS WITH THE AMERICAN BANKRUPTCY SYSTEM

Mongolia is a transitional economy which is striving to become a market economy with a bankruptcy system. Mongolia is dealing with problems such as difficult economic times, widespread poverty, distrust

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119. *Id.*

120. *Id.* at art. 33.

121. *Id.* at art. 34.

122. *Id.* at art. 35.

123. *BANKING LAW* art. 36 (Mong.) *infra* app. B.

124. *Id.* at art. 37.

125. *Id.* at art. 38.

126. *Id.* at arts. 39, 40.

127. *Id.* at art. 42.

128. *BANKING LAW* art. 41 (Mong.) *infra* app. B.

129. *Id.* at arts. 43-47.



of government and the judiciary, corruption and political, social, and moral resistance to bankruptcy as a concept. At least one author likens these experiences to the development in America of bankruptcy laws and suggests that such nations could learn from the American experience.<sup>130</sup>

#### A. *General Observations*

Two observations immediately come to notice. First, the Mongolian Bankruptcy Law is relatively elementary compared to the American bankruptcy system. Whereas the Mongolian Bankruptcy Law consists of thirty nine brief articles amounting to less than a dozen pages of text, the American bankruptcy system consists of an entire Chapter of the United States Code consisting of six volumes of text and annotations, each containing approximately 700 pages.<sup>131</sup> Further, the American bankruptcy system includes its own set of extensive procedural rules and a case reporter currently containing over 232 published volumes. Part of this difference can be explained by the fact that Mongolia is a civil code nation as opposed to a common law nation. However, a more comprehensive explanation recognizes the greater complexity of the American commercial and legal environment.

The second noticeable difference is that the Mongolian Bankruptcy Law does not address individual bankruptcies whereas the American bankruptcy system does.<sup>132</sup> The Mongolian Bankruptcy Law only concerns artificial entities.

This is an interesting difference between the two systems, considering the development of the American market economy. In America, the development of industry and commerce, at least initially, occurred primarily through the entrepreneurship of individuals, not artificial entities, such as corporations. It was only later in the economic history of America, with the rise of the great trusts in the late 1800s and early 1900s that the prevalence of corporations gained ascendancy over the individual.

Mongolia is now trying to start its market economy by focusing on, at least in its bankruptcy law, artificial entities. Although an analysis of this phenomenon is beyond the scope or intent of this article, it seems that it could have interesting ramifications in the long term development of Mongolia's economy.

#### B. *Structural Comparison*

There are two major structural differences between the Mongolian bankruptcy system and American bankruptcy system. The first difference

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130. Hon. Sidney B. Brooks, *Emerging Economies Learn from U.S. Experience*, 16 AM. BANKR. INST. J. 30 (July-Aug. 1997).

131. 11 U.S.C. §§ 101 *et seq.* (1994).

132. *Id.* §§ 701 *et seq.*, 1301 *et seq.*

is that in America there is a specialized court system devoted entirely to bankruptcy. The reason for this is the complex nature of bankruptcy proceedings in the United States.<sup>133</sup>

The second major structural difference is the Office of the United States Trustee.<sup>134</sup> The United States Trustee is not the same as the case trustee, who is responsible for administering the estate of the debtor. The United States Trustee is an arm of the Department of Justice and has specified monitoring duties concerning the administration of a bankruptcy case. Essentially, the United States Trustee is supposed to be a neutral overseer of the bankruptcy process.

### C. Comparing the Bankruptcy Systems

Generally, the Mongolian Bankruptcy Code is substantively the same as the American system. It provides for either the liquidation or rehabilitation of a debtor upon a determination of the debtor's insolvency. The primary differences are, essentially, procedural in nature. However, these procedural differences can lead to interesting ramifications.

The Mongolian Bankruptcy Law recognizes the same basic classes of parties as does American bankruptcy: debtors, creditors, and trustees. Under the American system, a debtor is insolvent if its debts exceed the sum of the value of its property (less certain listed exemptions).<sup>135</sup> The Mongolian system defines a debtor as bankrupt when it cannot pay its debts with more than 10% of its capital — capital being defined as the difference between the debtor's fixed and working assets and its liabilities. Thus, as the Mongolian definition of insolvency uses, as a base for calculation, a figure which is, by definition, less than sum of all the debtor's property (which the American system uses), it would seem that more debtors would “qualify” for bankruptcy under the Mongolian system than in America.

Like the American bankruptcy system, in Mongolia, a bankruptcy petition can be brought voluntarily by the debtor or initiated by another party against the debtor. Also, like the American system, a bankruptcy case may result in either a liquidation of the debtor or the debtor's reorganization.

An interesting difference between the two is the publicity accorded certain acts. Although the court records are public in the American system, under Mongolian Bankruptcy Law the court must publicly announce

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133. 28 U.S.C. § 151 (1994).

134. *Id.* §§ 581 *et seq.*

135. 11 U.S.C. § 101(32). These exemptions are not relevant as under the American bankruptcy system, they only apply to individual debtors and not to the bankruptcies of commercial or artificial entities. As the Mongolian bankruptcy system does not provide for individual bankruptcy, the issue of exemptions will not be addressed.

the first meeting of the creditors<sup>136</sup> and the trustee is required to publicly announce the information discussed concerning the proposed plans.<sup>137</sup> However, this difference does not seem to have any likely effect on the outcome of the proceeding.

Like the American system, in Mongolia a trustee is appointed to administer the estate.<sup>138</sup> The duties of the Mongolian trustees are similar to those of American trustees.<sup>139</sup> However, American trustees seem to have greater powers than their Mongolian counterparts. Further, the Mongolian system also allows for the debtor to manage the rehabilitation process (*i.e.*, debtor in possession). However, the wording of the Mongolian law appears to contemplate this as a rare occurrence whereas, under American law, this is the norm.<sup>140</sup> Unlike the American system, when the debtor handles the rehabilitation process in Mongolia, a trustee is still appointed to supervise the debtor. But, in the American system, the Office of the United States Trustee, arguably, fulfills this function.<sup>141</sup>

A fascinating difference between the two systems is the involvement of creditors. While the Mongolian system directly involves all of the creditors in a meeting, significant participation by the unsecured creditors under the American system is limited to the Creditors' Committees, appointed by the United States Trustee.<sup>142</sup> Secured creditors are, generally, left to their own resources. The greater participation allowed for creditors under the Mongolian system could have interesting results.

The Mongolian Bankruptcy Law provides that the debtor, creditors, or the trustee may file a plan of reorganization. Under the American system, the same parties may file a plan, but the debtor has the first opportunity to do so within 120 days of the date of order for relief. Further, certain committees consisting of interested parties and holders of equity in the debtor may propose a plan.<sup>143</sup> Although this difference does not appear to be significant, as in most bankruptcy proceedings in America, most of the plans filed are filed by either the debtor, creditors, or the trustee. However, in the Mongolian system, the inability of equity holders of entities to file a plan could have interesting repercussions where there is a dispute between the equity holders (*i.e.*, the owners) and manage-

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136. BANKR. LAW art. 5.5 (Mong.) *infra* app. A.

137. *Id.* at art. 26.3.

138. 11 U.S.C. §§ 701-03, 1104 (1994) (addressing the appointment of trustees in liquidation and reorganization).

139. *Id.* §§ 704, 1106.

140. *Id.* § 1107.

141. 28 U.S.C. §§ 581 *et seq.* (1994).

142. 11 U.S.C. § 1102 (1994).

143. *Id.* § 1121. The statute also permits any "party in interest" to file a plan. The statute does not define party in interest, thus leaving some leeway to the court to consider plans filed by parties other than the debtor, creditor, or trustee.

ment.

As with the American system,<sup>144</sup> Mongolia requires that a plan must be approved by the court for the debtor to attempt rehabilitation. However, whereas the Mongolian system mandates liquidation if a plan is not confirmed, the American system grants the court the discretion to either dismiss the petition or order the debtor to be liquidated when a plan is not confirmed.<sup>145</sup> This difference does not seem to be significant as, despite the discretion invested in the court, there appears to be little other option except liquidation when a plan is not approved under the American system. However, in the confirmation process there is a significant difference. Whereas under the American system, parties in interest can object to the court's approval of the plan, the Mongolian Bankruptcy Law has no such provision.<sup>146</sup>

The Mongolian system, like the American system,<sup>147</sup> provides for liquidation of the debtor if a plan is not proposed, the proposed plans are not approved, or the plan is not completed. However, the American Bankruptcy Code provides for liquidation in other specified circumstances. However, like the American system, if the plan is completed, the debtor is discharged from all debts.<sup>148</sup>

A significant difference between the two systems is the time requirements. Under the Mongolian system, there are specified time frames within which certain procedures must occur. A determination of insolvency must be made by the court within thirty days if the matter is an involuntary petition and within five days if it is voluntary. The first meeting of creditors must be within thirty days of the filing of the petition. The court must approve the appointment of the trustee within five days. Within twenty days of the appointment, the trustee must file the initial report. Within thirty days after that, the proposed plans must be submitted. Within twenty days of that date, a meeting must be held and the plans must be discussed. Within twenty days after the meeting and the vote, the court must approve or reject the proposed plans. This time difference is significant when compared to the American system, where bankruptcy proceedings can take years to complete these basic steps.

Concerning liquidations, the Mongolian and American systems are more similar. There is a meeting of all the creditors in a liquidation in both the American and Mongolian systems.<sup>149</sup> The trustee gathers the property of the estate, liquidates it, and distributes the funds to the credi-

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144. *Id.* § 1129.

145. *Id.* § 1112.

146. However, this omission may be compensated for in the Mongolian system by the greater participation of all the creditors at the creditors' meeting.

147. 11 U.S.C. § 1112 (1994).

148. *Id.* § 1141(d).

149. *Id.* §§ 341, 705.

tors. However, under Mongolian Bankruptcy Law, the trustee must submit a plan of distribution of funds to the court for approval, to which the creditors have the right to object. In the American system, the trustee does not have to obtain the court's approval to distribute the funds and the creditors do not have the right to object to the trustee's distribution.

Finally, under both systems, during the pendency of the bankruptcy proceedings, creditors are prohibited from taking action to collect debts from the debtor. However, under the Mongolian system, the prohibition is absolute, whereas under the American system, this prohibition can be modified.<sup>150</sup>

There is little doubt that the great similarity between the Mongolian and American bankruptcy systems is due, at least in part, to the fact that Americans were so involved in the drafting of the law and the general success of the American bankruptcy system. However, as can be seen by this brief comparison, there are significant differences. In some instances, the Mongolian law gives greater protections to the debtor and in other instances the American law gives greater protections.

#### IV. IMPLEMENTATION OF THE MONGOLIAN BANKRUPTCY LAW

##### A. Theoretical Implementation

As a theoretical matter, the Mongolian Bankruptcy Law is relatively rudimentary, compared to the complex codes and rules employed by other nations (*e.g.*, the United States).<sup>151</sup> Further, Mongolia employs a civil law legal system, as opposed to a common law system, which usually encompasses more specific procedures. Thus, it would appear that, as a *prima facie* matter, implementation should not be difficult.

However, such a position is unrealistic and does not account for a number of other factors which are not necessarily unique to Mongolia.<sup>152</sup> Indeed, acceptance by the public and, particularly, the new Mongolian commercial community is essential for the success of any market-oriented reforms.<sup>153</sup>

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150. *Id.* § 362.

151. However, this is not to imply that other nations' codes are necessarily superior to the Mongolian Bankruptcy Law. Indeed, simplicity has many benefits, such as, for example, significantly increased efficiency.

152. *See, e.g.*, Sheryl Miller, *Institutional Impediments to the Enforcement of China's Bankruptcy Law*, 8 INT'L LEGAL PERSP. 187 (1996) (acknowledging institutional impediments limiting the implementation of the People's Republic of China's Enterprise Bankruptcy Law).

153. Kovacic, *supra* note 1, at 1208.

## B. Current Problems

### 1. Institutional Impediments

In Mongolia, and in any country changing from a government controlled economy to a market economy, institutional impediments to implementation exist.<sup>154</sup> With regard to Mongolia, these issues include: transparency, accountability and the idea of "rule of law v. rule by bureaucracy."<sup>155</sup> With regard to transparency, decisions should be issued in writing and there must be public access to certain records and proceedings. With regard to accountability, the right to appeal must be formalized. The Bankruptcy Law appears to address some aspects of this issue.

Although the Mongolian Bankruptcy Law provides for appeal, the procedures are not clear. Further, the very idea of bankruptcy requires that management will be held, at least to some degree, accountable for the failure of the business, which is a foreign concept with state controlled and managed enterprises.<sup>156</sup> The Mongolian Bankruptcy Law does provide for some degree of management accountability in that it provides for management to be removed.

To address the institutional problem of rule of law v. rule by bureaucracy, the solution will likely lie in education of both the government officials and the populace, as the problem is more closely related to the state of mind of the people than to actual institutional apparatus. Living for years under a government controlled legal system which did not recognize the rule of law is an obstacle which will likely require at least a generation to overcome.

### 2. Corruption

One of the difficulties in implementing not just the Bankruptcy Law, but all laws in transitional economies, and not just in Mongolia, is the existence of corruption.<sup>157</sup> For example, in Mongolia, the judges are underpaid and are said to be susceptible to bribery.<sup>158</sup> The local press matter-of-factly reports that to obtain business loans from banks requires a 10% bribe to the loan officer.<sup>159</sup> Further, this issue is highlighted by the

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154. See, e.g., Miller, *supra* note 152.

155. Preliminary Report of Working Group, Obstacles to Doing Business in Mongolia 1 (March 31, 1998) (unpublished report provided to the faculty through the courtesy of Ambassador La Porta of Mongolia, on file with author).

156. See, e.g., Cho, *supra* note 2, at 748-49.

157. Thomas L. Friedman, *A Show of Hands: In Less Developed Countries From Albania to Nigeria, the Free Market Means the Liberty to Steal as Much as You Can*, NAT'L POST, Aug. 1, 1999, at 24.

158. Conversations with various legal professionals in Mongolia (September 1998).

159. David P. Leibowitz, Bankruptcy Law Training in Mongolia (Sept. 7-28, 1998) (unpublished faculty report on file with the International Law Institute).

problem of arbitrary decision-making by bureaucrats.<sup>160</sup>

Many of these problems stem from the fact that Mongolia is still a transitional economy, attempting to adopt market principles since its change from a centrally planned economy. Numerous transition economies have experienced the problem of corruption.<sup>161</sup> However, with the stabilization of its economy, Mongolia hopefully is taking positive steps to address this serious problem.<sup>162</sup>

### 3. Conflict with the Civil Code of Mongolia

During the course of this project many of the participants in the course felt that the Civil Code of Mongolia overruled any provisions of the Bankruptcy Law,<sup>163</sup> even though the express language of the Bankruptcy Law states that only those procedures which are not governed by the Bankruptcy Law will be governed by the Civil Code.<sup>164</sup>

The relationship between the Civil Code and the Bankruptcy Law must be clarified. This can be done through a system of training and education, which this project attempted. Of course, additional training and publicity on this relationship must be instituted. Another way to address this problem would be to amend the Bankruptcy Law such that all questions of procedure would be governed by the Civil Code or to make appropriate changes to the Civil Code.

Indeed, as of the fall 1999, the Great Hural of Mongolia is scheduled to consider adopting a complete revision of its Civil Code, which currently consists of 435 articles. A team of German legal professionals is assisting in the preparation of the new Civil Code.<sup>165</sup> The current draft of the new Civil Code contains approximately 1500 articles.

### 4. Cultural Unfamiliarity with the Concept of Bankruptcy

As Mongolia is a transitional economy, there exist significant cultural impediments to implementing the new Bankruptcy Law.<sup>166</sup> Many of

160. Preliminary Report of Working Group, *supra* note 155, at 2.

161. Friedman, *supra* note 157.

162. Sahr Kpundeh, et al., *Combating Corruption in Developing and Transitional Countries: A Guidelines Paper for USAID* (March, 1998) (unpublished manuscript currently being used by Mongolia as a guide for addressing the problem of corruption, on file with author).

163. Leibowitz, *supra* note 159.

164. BANKR. LAW art. 2.2. (Mong.) *infra* app. A. It is interesting to note that the Mongolian Civil Code expressly acknowledges the authority of the Bankruptcy Law. CIV. C. art. 31(1) (Mong.) *infra* app. C.

165. Telephone Interview with Sarangua Davaadorj, Esq. of the International Law Institute, Washington, D.C. (Aug. 10, 1999).

166. Leibowitz, *supra* note 159; cf. Manfred Balz, *The European Union Convention on Insolvency Proceedings*, 70 AM. BANKR. L.J. 485 (1996) (addressing the problems of differing cultures even in highly developed market economies).

the people of Mongolia are not familiar with the concept of bankruptcy, having just recently emerged from a state-controlled economy.<sup>167</sup> These, for the most part, are the residual influences of the former regime.

This is a problem which can be addressed through publicity and education. Indeed, during the course of the project, it was covered by the local television and radio stations and published in the national newspaper, *The Government News*. This publicity even resulted in a number of additional participants.<sup>168</sup> Further, the Mongolian Ministry of Justice is planning a public education program which will be implemented before the end of this year.<sup>169</sup>

### 5. Lack of Training and Experience

As previously mentioned, very few bankruptcy proceedings have come before the courts of Mongolia. Part of the problem is the lack of familiarity with bankruptcy procedures on the part of the Mongolian legal community.<sup>170</sup> However, this project began the process of addressing this concern. Further, in October of 1999, the Mongolian Ministry of Justice is conducting a follow up program to train a cadre of trustees to facilitate the implementation of the Bankruptcy Law.

### 6. Inherent Difficulty with the New Laws

The Mongolian government, itself, must develop its legal institutions so that they will be fully capable of administering the bankruptcy system.<sup>171</sup> Actual mechanisms for enforcing and implementing these laws must be in place and employed. If these mechanisms are not developed and actually employed, the new laws will be meaningless.<sup>172</sup>

For example, the faculty recommended that government registries for moveable and immovable property be developed as soon as possible to facilitate the development of secured lending practices and help ensure accurate accounting of property during the bankruptcy proceedings.<sup>173</sup> Further, as previously discussed, the relationship between the Civil Code and the Bankruptcy Law is not entirely clear to the Mongolian legal community.<sup>174</sup> This could be addressed with additional training and clari-

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167. Cho, *supra* note 2, at 742 (commenting on the ideological precepts of a socialist state being inconsistent with bankruptcy as a concept).

168. Davaadorj, *supra* note 12, at 9; *see also* Letter from Bat-Orgil Tourgold to William C. Plouffe, Jr., *supra* note 21.

169. Letter from Bat-Orgil Tourgold to William C. Plouffe, Jr., *supra* note 21.

170. Davaadorj, *supra* note 12, at 2.

171. Kovacic, *supra* note 1, at 1209-13.

172. *Id.* at 1213-14.

173. Leibowitz, *supra* note 159.

174. *Id.*



fyng laws.<sup>175</sup>

### 7. Privatization

Finally, it must be realized that privatization is the most important step for transitional economies.<sup>176</sup> Without it, the true market economy will not function. Privatization has not been a great success in Mongolia up to this point.<sup>177</sup> But this is not cause for alarm, given the extensive positive steps that the Mongolian government has taken.

However, this does not mean that bankruptcy laws only belong in market economies and do not have a place in transitional economies. Bankruptcy laws are an important step in privatization in that bankrupt state owned enterprises can be sold to private investors.<sup>178</sup> Mongolia has recognized this fact and is taking the appropriate steps to facilitate its entry into the world economy.

With regard to privatization, Mongolia must ensure that it does not experience some of the same problems that Russia has faced with regard to entrenched hold-over interests from the former Soviet Union.<sup>179</sup> Hopefully, this will not be the problem for Mongolia as it was for Russia as control of the Mongolian economy was, essentially, Soviet dominated.

## V. INTERNATIONAL CONSIDERATIONS

One of the more interesting aspects of the Mongolian Bankruptcy Law is that it contains specific provisions for the effect of treaties over local law.<sup>180</sup> Depending upon what treaties are in effect with Mongolia and the terms of those treaties, this could provide a powerful incentive for foreign investment in Mongolia. This point is highlighted by the preferential treatment some governments provide in support of their domestic industries (*i.e.*, Japan).

One potentially significant omission in the Mongolian Bankruptcy Law is any provision for handling conflicts of laws. This could be addressed by the new Civil Code. This is an important consideration given the development of bankruptcy laws in other Pacific nations (*e.g.*, Peo-

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175. The Great Hural of Mongolia will be considering a completely new Civil Code during the fall and early winter of this year.

176. Hon. Bufford, *supra* note 1, at 467-68.

177. John Nellis, *Time to Rethink Privatization in Transition Economies?* FIN. & DEV., June 1, 1999, at 16.

178. Hon. Bufford, *supra* note 1.

179. Kent F. Moors, *The Failure of Russian Privatization 1992-1994: How the Industrial Nomenklatura Prevented Genuine Reform*, 3 J. INT'L LEGAL STUD. 1 (1997).

180. BANKR. LAW art. 2.3 (Mong.) *infra* app. A; CIV. C. arts. 423 *et seq.* (Mong.) *infra* app. C.

ples Republic of China and Vietnam).<sup>181</sup>

## VI. CONCLUSION

The Mongolian Bankruptcy Law is a needed and sound step in Mongolia's transition to a market economy. Mongolia's significant natural resources will provide the foundation for foreign investment and Mongolia's implementation of its new Bankruptcy Law, combined with its development of privatization, will enhance Mongolia's ability to attract investment capital.

There are still difficulties to be addressed before Mongolia's new Bankruptcy Law is fully functional, but they are not insurmountable. Mongolia's international market potential and future are bright.

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181. Ron W. Harmer, *Comparison of Trends in National Law: The Pacific Rim*, 23 *BROOK. J. INT'L L.* 139 (1997).

**APPENDIX A**  
**BANKRUPTCY LAW OF MONGOLIA**

Chapter One  
General Provisions

Article 1. Purpose of the Law

1.1. The purpose of this law is to regulate relations concerning institutions of bankruptcy proceedings, and procedure thereof, and rehabilitation and liquidation of insolvent entities.

Article 2. Legislation on Bankruptcy

2.1. The legislation on bankruptcy is comprised of Civil Law, Civil Procedure Law, this law and other legislative acts issued in conformity with them.

2.2. The relations concerning institution of Bankruptcy proceeding and its procedure that are not regulated by this law shall be regulated by Civil Procedure Law.

2.3. If an international treaty to which Mongolia is a party is inconsistent with this law, then the provision of the international treaty shall prevail.

Article 3. Definitions of the Law

3.1. In this law the following terms shall have the following meanings:

3.1.1. "creditor" means a person who has a right to require a performance of obligations from a debtor;

3.1.2. "debtor" means an insolvent partnership, or cooperative, or company, or state and locally owned companies and non governmental organizations with the right of legal person;

3.1.3. "capital" means the difference between fixed and working assets of debtors and its liabilities;

3.1.4. "trustee" means a person proposed by the meeting of creditors and appointed by a court to be in charge of implementation of rehabilitation plan or liquidation; and supervising of rehabilitation activities and protecting the assets of a debtor.

#### Article 4. Consideration of Insolvency

4.1. It shall be considered to be insolvent, when entity is unable to pay debts due, with more than 10 percent of its capital, on time.

### Chapter Two Institution of Bankruptcy Proceeding

#### Article 5. Institution of Proceedings of Bankruptcy

5.1. A court shall institute a bankruptcy proceeding when:

5.1.1. a creditor submits a petition to institute a bankruptcy proceeding against a debtor; or

5.1.2. a debtor submits a request to institute a bankruptcy proceeding on the ground of its inability to perform obligations.

5.2. A judge shall issue a decision on the institution of a bankruptcy proceeding within a period of 5 days from the date of receipt of the petition or request, when such petition or request meets requirements stated in Article 7 of this law.

5.3. A court shall give a copy of the petition of a creditor to the debtor within 5 days from the date on which a bankruptcy proceeding has been instituted and within 30 days shall determine the insolvency of the debtor.

5.4. When a debtor is found to be solvent, a court shall dismiss a bankruptcy proceeding and try the case in accordance with relevant laws.

5.5. A court shall announce to the public its decision on institution of a proceeding within a period of 7 days from the date of determination of insolvency of a debtor. The announcement shall state date, place of the first session of the meeting of creditors, procedure for and date to submit claims and consequence of nonsubmission of the claims within the time set out in the law.

5.6. when a court institutes a proceeding, it may take an action stipulated in Article 69 of Civil procedure law by its own initiative or by the request of the creditors.

5.7. When a court institutes a proceeding it may appoint a temporary trustee. A temporary trustee shall have the right and responsibilities specified in 12.11, 12.12, 12.1.3, 12.1.4, 12.1.5 and 12.1.9 of this law.

## Article 6. Filing of Complaint Against Court Decision

6.1. Parties to a proceeding are entitled to complain against the decision of a judge or a court, issued in relation with a bankruptcy proceeding within a period of 7 days from the date on which such decision was issued. The court shall decide on the complaint within 15 days.

6.2. If the parties do not agree with the decision of the court, they are entitled to appeal such decision within 10 days from the date on which the decision was issued. The court shall decide the appeal within 30 days.

6.3. During the consideration of the complaint, the bankruptcy proceeding shall be suspended temporarily, and the suspension period shall be ceased on the date when the court issues a decision on the complaint.

## Article 7. Requirements of Petition and Request to Institute a Bankruptcy Proceeding

7.1. A request submitted by a debtor to initiate a proceeding shall state the grounds on the basis of which, it appears to be insolvent, the intention of a debtor to be rehabilitated or liquidated, and statements in accordance with Article 60 of Civil Procedure Law; and must be accompanied by the following documents:

7.1.1. financial statements for the past three years;

7.1.2. a list of all assets owned by a debtor or trusted estate in ownership of it, together with an evaluation proposal of them;

7.1.3. names and addresses of creditors, the amount of payment due to each of them;

7.1.4. names and addresses of a person who has an obligation of payment to the debtor and amounts due;

7.1.5. names and addresses of members of cooperatives and partners with unlimited liability in the case of partnership.

7.2. A petition to institute a proceeding filed by a creditor shall state a request to declare an insolvency of the debtor, the grounds on the basis of which, the debtor appears to be insolvent, obligations of the debtor, amount of such obligations, payment dates accompanied by the proofing documents, and a request to rehabilitate or liquidate the debtor.

7.3. In the case of necessity, a court may require additional documents to prove an insolvency of the debtor from the person who submitted the petition or request.

## Article 8. Meeting of Creditors

8.1. A court shall organize the first session off the meeting of creditors within a period of 30 days from the date of announcement of institution of a bankruptcy proceeding.

8.2. The first session of the meeting of creditors shall propose to the court a trustee who meets the requirements of 11.2 of this law.

8.3. The meeting of creditors shall decide the following issues:

8.3.1. whether to approve rehabilitation plan by each class of creditors;

8.3.2. to supervise the implementation of a rehabilitation plan and discuss financial statements of a debtor;

8.3.3. to propose to the court to appoint a trustee and to determine the amount of its remuneration, wages, expenses of its activities, and the date and procedure of payment of such expenditures;

8.3.4. to determine conditions, restriction or limitation of the power of a trustee, when the right of a debtor to dispose of its assets has been given to the trustee;

8.3.5. to introduce with the information and conclusion of the trustee and discuss its report;

8.3.6. to request the court to replace the trustee;

8.3.7. to file a complaint against the activities of the trustee;

8.3.8. to apply to the court regarding the activities of the trustee; and

8.3.9. to decide whether a decision of the court, to liquidate the debtor, should be implemented without the court's involvement.

8.4. A trustee shall call a meeting of creditors, at the request of the creditors who represent at least 10 percent of the total claims against the debtor.

## Article 9. Procedure for Passing Resolutions by the Meeting of Creditors

9.1. Each creditor shall attend the meeting of creditors, with a voting right equal to the percentage of its claims from the total claim of creditors.

9.2. The meeting shall pass resolutions with more than 66.7 percent of votes cast on claims.

## Article 10. Board of Creditors

10.1. If there are more than 7 creditors, the meeting of creditors may establish a board of creditors, which shall consist of an odd number of creditors with a minimum of 3.

10.2. The structure of the Board shall be approved with more than 66.7 percent of votes cast.

10.3. The rights and responsibilities of the Board shall be established by the meeting of creditors.

## Article 11. Appointment of Trustee

11.1. A court shall appoint a trustee, proposed by the first session of the meeting of creditors, in accordance with 8.2. of this law within a period of 5 days.

11.2. A trustee shall be an individual who has a degree in finance, or economics, or law; or a legal person with rights and responsibilities of offering professional advice, or providing services in law, economics, or finance and shall not have a personal, financial or economic interest in the activities of the debtor.

11.3. It shall be prohibited to appoint the following persons, or their family members if:

11.3.1. they are the management of a debtor, or a creditor, or its member;

11.3.2. they are the members of a debtor in the case of a legal person, except being a member of a shareholding company;

11.3.3. if he/she is an individual creditor.

**Article 12. Powers and Duties of Trustee**

12.1. A trustee shall have the following rights and responsibilities:

12.1.1. placing assets under seal;

12.1.2. making an inventory of assets and documents of a debtor, and protecting them against loss;

12.1.3. calling the meeting of creditors;

12.1.4. examining all transactions made before an institution of a bankruptcy proceeding, and addressing the meeting of creditors to make void or change or rescind the agreements on the basis of 19, 20 of this law and Article 43, 44 of Civil Law;

12.1.5. to apply to the court for a decision;

12.1.6. to change an agreement before the case is decided;

12.1.7. opening a special account to receive and deposit a debtor's money;

12.1.8. concluding agreements on behalf of the debtor within the authorization given by the meeting of creditors;

12.1.9. requesting any necessary information from a debtor;

12.1.10. introducing its report on activities of a debtor to relevant persons;

12.1.11. making an estimate of the a value of assets of a debtor;

12.1.12. hiring an assistant within the limits of remuneration established by creditors;

12.1.13. selling property of a debtor in accordance with rules stipulated in Article 18 of this law and Civil Law; and

12.1.14. other rights and responsibilities provided by this law.

12.2. A trustee shall be liable for any losses and damages caused by its negligence and fraud and other illegal acts.

12.3. Parties to a proceeding shall have a right to file a complaint against



actions taken by a trustee to a court, and the court has a right to replace the trustee.

#### Article 13. Report of Trustee

13.1. A trustee shall within a period of 20 days from its appointment submit a report on the activities of a debtor, to the court, debtor, and creditors. The report shall cover the following issues:

13.1.1. finance and economic transactions of the debtor and a conclusion made on them;

13.1.2. causes and circumstances which resulted in insolvency of the debtor;

13.1.3. conclusion on the activities of the management of the debtor;

13.1.4. amount of claims for each creditor and class of creditors;

13.1.5. recommendation for the rehabilitation or liquidation of the debtor; and

13.1.6. other necessary information and documents.

13.2. During the period of submission of the report, a court may at the request of the trustee appoint an expert.

13.3. A trustee shall provide the persons who have a right to submit a rehabilitation plan the possibility of being introduced to the trustee's report.

#### Article 14. Vesting Rights of Debtor to Manage and Dispose of its Assets to Trustee

14.1. The right to manage the activities and dispose of the assets of the debtor shall be vested in the trustee, if a debtor did not submit a request for and a rehabilitation plan to a court; or the court did not approve the plan; or the court issued a decision on liquidation of a debtor.

#### Article 15. Time Limits for Submission of Claims

15.1. Creditors shall submit their claims to the court within a period of 21 days from the date of announcement of the insolvency of a debtor.

#### Article 16. Submission of Request by Government and Hural of Citizens' Representatives

16.1. The Government and Hurals of Citizens' Representatives may give a guarantee to pay a debt due by an insolvent state and locally owned enterprise before the first meeting of creditors to a court.

16.2. A court may defer a proceeding for three months if a guarantee given by the Government and the Hurals of Citizens' Representatives is approved by the court.

#### Article 17. Assets to be Distributed

17.1. Any property which was in its possession when a court issued a decision of institution of a proceeding; or any objects of ownership which become newly available to the debtor before the completion of its liquidation and removal from the State register; and the income and earnings from such property shall be regarded as the property of a debtor for distribution.

17.2. Persons who have obligations due to a debtor, shall perform their obligations in accordance with the agreement.

#### Article 18. Sale of Assets of Debtor

18.1. Assets of a debtor shall be sold in ways that could get a maximum price for them.

18.2. The market value, quality, demand for the assets and suggestion of a debtor shall be considered in evaluating the value of the assets of a debtor.

18.3. An appraiser shall be appointed when it becomes difficult to evaluate the assets; or if a debtor does not agree with the price established by the trustee. The price set by the appraiser shall be the final price for the assets.

18.4. Assets shall be sold in the form of an auction in accordance with Article 162 of Civil Law and Article 29, paragraph 2,3, and 4 of Law on Execution of Judgment.

18.5. Agreed sums of money acquired as a result of the sale of assets shall be granted to a trustee by the resolutions of the meeting (Board) of creditors.

## Article 19. Void Transactions Concluded by Debtor

19.1. The following transactions concluded by a debtor shall be considered void:

19.1.1. transactions which provide the members of the management of a debtor and their family members the debtor's assets free of charge to their ownership, and were concluded within a period of 2 years before an institution of a proceeding;

19.1.2. transactions which provide the persons other than specified in 19.1.1. of this law the debtor's assets free of charge to their ownership, and were concluded within a period of one year before an institution of a proceeding;

19.1.3. transactions which provide a sale of and service for others which allows a preference over the others;

19.1.4. transactions which provide payment of debts, if they have the intent and effect of bestowing a preference on the creditors over the other creditors which were concluded within a period of 120 days from the date of institution of a proceeding;

19.1.5. transactions which are concluded in breach of this law after the institution of a proceeding.

## Article 20. Modification to and Termination of Contracts of Debtor

20.1. In order to increase a debtor's assets to be distributed, a court, by the request of the meeting of creditors (Board) shall have the right to modify or terminate the contracts, the obligations of which are not performed completely or in part.

## Article 21. Deferral of Activities of Creditors

21.1. In order to provide equal treatment to all creditors in a proceeding, the following activities of creditors shall be deferred:

21.1.1. completion of payments and services out of assets of a debtor to be distributed;

21.1.2. to transfer the property to be distributed in ownership of others;

21.1.3. completion of payments or transfer of property out of the assets of a debtor by a previous decision of court;

21.1.4. to take assets of the debtor in pledge, increase an amount of property to be pledged, or sell the pledged assets or dispose of the assets to be distributed by other means; and

21.1.5. to transfer the obligation due to a debtor to another, or terminate the obligations by off-setting the debtor's obligations.

#### Article 22. Prohibition to Terminate Contracts

22.1. A debtor shall be prohibited to terminate or modify contracts on the ground of its insolvency if such contract would provide ordinary business conditions for the activities that were authorized by this law.

22.2. Payments due in accordance with 22.1 of this law shall be accumulated in a special account and be completed by the consent of the court each month.

### Chapter Three Rehabilitation of Debtor

#### Article 23. Request for Rehabilitation of Debtor

23.1. when there is an assumption that creditors could get the maximum value of the debtor's assets through rehabilitation, than over liquidation of its assets, the following persons may submit a request for rehabilitation to a court within a period of 60 days from the date of determination of the insolvency of a debtor:

23.1.1. debtor itself;

23.1.2. creditors holding equal to or more than one third of the value of total claims;

23.1.3. trustee.

23.2. The request for rehabilitation shall state the financial, management and other possibility, their estimation and prospects for reorganized entity.

## Article 24. Rehabilitation Plan

24.1. A person specified in 23.1 of this law shall submit a rehabilitation plan (further referred to as "plan") to a court within a period of 30 days from the date on which he/she was first introduced to the trustees report.

24.2. A plan shall precisely state the following activities;

24.2.1. whether to make amendments to the debtor's founding agreement, the amendment itself if to make;

24.2.2. whether to replace the management of a debtor, names and addresses of persons who will work in the management;

24.2.3. whether to issue securities in exchange for claims;

24.2.4. whether to extend a maturity date or change an interest rate of securities issued by the debtor; if to change the interest rate then for how much;

24.2.5. new contracts to be concluded;

24.2.6. if to sell the assets, in what quantity;

24.2.7. transfer of the property to others;

24.2.8. retention of assets by the debtor;

24.2.9. classification of creditors, classified in accordance with 35.4 of this law;

24.2.10. methods, forms, amounts of and period during which claims to be satisfied, in the order according to 35.5 of this law;

24.2.11. comparative estimation of proposed payment to be allocated to the creditors through rehabilitation and liquidation;

24.2.12. if to amend or terminate the labor agreement, then the social benefit guaranteed, or measures to be taken for training or retraining;

24.2.13. duration of the plan and its completion date;

24.2.14. a remuneration, wages to a trustee and the related persons and procedure for the payment;

24.2.15. other activities to rehabilitate the debtor in accordance with this law.

#### Article 25. Duration of Plan

25.1. A rehabilitation plan shall be completed within a period of 2 years.

#### Article 26. Preparation of Plan for Discussion

26.1. A court shall determine beforehand the date of a meeting for discussion of a plan. The meeting shall be organized within 20 days from the expiration of the date established in 24.1 of this law.

26.2. A trustee shall be responsible for the preparation of the meeting.

26.3. A trustee shall, through the mass media, notify the public of any information concerning the discussion of a plan.

26.4. The information shall indicate the date of the meeting, the agenda and procedure of the meeting, and other necessary information.

#### Article 27. Voting for Plan at the Meeting of Creditors

27.1. A trustee shall organize the meeting of creditors to discuss a plan.

27.2. A person, who submitted the plan shall be required to participate in the meeting.

27.3. Only creditors whose claims have been assumed by the court shall be entitled to vote for the plan according to the following classification;

27.3.1. Secured creditors whose claim is equal to or exceeds 10 percent of the value of total claims;

27.3.2 other secured claims;

27.3.3. employers who have concluded a labor agreement with the debtor;

27.3.4. others.

27.4. The plan shall be deemed to have been accepted by the creditors of each class if holders of a majority of claims of such class approved the plan.

27.5. The meeting of creditors shall discuss all of the plans and vote for them if than two plans are proposed.

#### Article 28. Approval of Plan

28.1. A court shall within a period of 20 days from the date of discussion of the plan at the meeting of creditors decide whether to approve the plan.

28.2. A court shall approve the plan if one of the following circumstances exists:

28.2.1. at least two thirds of the classes accepted the plan;

28.3.2. if a debtor could pay back more sums than over its liquidation;

28.3. A court shall approve the debtor's plan if several plans have been accepted by the meeting of creditors.

28.4. A court shall approve the plan which is accepted by the class placed at the greatest disadvantage, if it considers that the plan proposed by the debtor does not meet with the requirements stipulated in 28.2 of this law, it shall be deemed to be placed at the disadvantage, if according to the plan, the creditors would receive less than the full amount of their claims.

28.5. If no plan is approved, the court shall issue an order on declaration of a bankruptcy of a debtor and its liquidation.

#### Article 29. Implementation of Plan

29.1. A rehabilitation shall be implemented by a debtor under the supervision of the trustee or by a trustee according to the decision of a court.

29.2. A court may charge the debtor with the responsibility of implementation of the plan, if the plan is proposed by the debtor and approved by the court. In such cases the debtor shall be entitled to dispose of the property within the limit and terms established by the trustee.

29.3. A trustee, debtor and the meeting of creditors (Board) may submit a request to the court to replace the trustee or the debtor if they consider that trustee or debtor could not implement the plan.

29.4. A trustee shall, in addition to the supervisory right given in accordance with 12.1 of this law, have the following rights and responsibilities:

29.4.1. to investigate the financial conditions, income and expense statements of the debtor once per month, in case of necessity in each case;

29.4.2. to call the meeting of creditors if it is required to make changes to the plan or if the debtor has become unable to implement the plan.

29.5. A debtor or trustee, or the meeting of creditors (Board) has a right to submit the court a request for liquidation of the debtor of the ground of its bankruptcy if they consider that the plan could not longer be implemented.

29.6. A court shall issue a decision on declaration of the bankruptcy of the debtor and its liquidation if the request submitted in 29.5 of the law is deemed to be reasonable.

#### Article 30. Extension of Rehabilitation Period

30.1. A trustee or the meeting of creditors may request a court to extend the period of rehabilitation.

30.2. A court may extend the rehabilitation period requested as stated in 25.1 of this law for up to six months, if the debtors financial condition improves and it could pay off the claims of creditors during the implementation of the plan.

30.3. If the court decides to extend the rehabilitation period, it may impose some restrictions and conditions to the new plan.

30.4. Creditors may appeal the decision on extension of the rehabilitation period to the court if the debtor incurs a loss during the extended period of the plan set by the court. The filing of such appeal shall not become a ground to stop the implementation process of the plan.

#### Article 31. Report on Implementation of Plan

31.1. A debtor who has been entrusted with the implementation of the plan shall each month submit an income and expense statement as well as other financial statements. A trustee shall present financial statements of a debtor to the meeting of creditors (Board) every quarter.



## Article 32. Completion of Rehabilitation Process

32.1. A court shall complete the rehabilitation process by the following grounds:

32.1.1. possibility of implementation of the plan has ceased;

32.1.2. a plan has been implemented in whole;

32.1.3. claims of creditors are satisfied in accordance with the plan although the plan has not been implemented in whole yet.

32.2. In the case stipulated in 32.1.1 of this law, a court shall issue an decision to declare a bankruptcy of the debtor and liquidate its assets.

32.3. In the case stipulated n 32.1.2 and 32.1.3. of this law, a court shall dismiss the proceeding.

32.4. Upon the dismissal of the proceeding on the grounds of 32.1.2 and 32.1.3 of this law, a debtor shall be released of the obligations due creditors and shall restore its activities.

## Chapter Four Liquidation of Debtor

### Article 33. Liquidation of Debtor

33.1. A court shall issue a decision to declare a bankruptcy of a debtor and liquidate it on the following grounds:

33.1.1. person, stated in 23.1 of this law did not file a petition or request on rehabilitation to a court;

33.1.2. a plan was not approved by a court; or it has not been submitted to a court;

33.1.3. possibility of implementation of a plan has ceased.

33.2. A court shall through mass media announce its decision on declaration of a bankruptcy and a liquidation to the public within a period of 5 days from the date on which the decision has become effective.

#### Article 34. Placing Assets Under Seal and Inventory of Assets

34.1. A trustee shall place assets of a debtor under a seal within a period of 5 days and make an inventory within a period of 30 days after the decision of the court on placing assets of a debtor under a seal was issued. A period, during which an inventory shall be commenced may be extended by the meeting of creditors (Board).

34.2. A trustee shall place assets of a debtor under a seal except:

34.2.1. goods which must be sold immediately in order to prevent their material deterioration or loss of value;

34.2.2. accounting records; and

34.2.3. securities.

34.3. A debtor or its representative shall attend an inventory process. If the debtor or its representative intentionally avoids to attend the inventory process, an inventory commission, appointed by a court, shall proceed with the inventory.

34.4. An inventory document shall be signed by a trustee, a debtor or its representative; or by members of the inventory commission if it is appointed.

34.5. A trustee shall inform a debtor beforehand that the inventory documents contain all assets of the debtor in its ownership and take a signature of the debtor in the inventory act.

#### Article 35. Allocation of Sums

35.1. A trustee shall allocate sums of a debtor in accordance with a plan.

35.2. A trustee shall submit a plan for allocation of sums to a court and give a copy of such plan to all creditors within a period of two months from the date on which a decision of liquidation was issued.

35.3. If creditors do not agree with the plan of allocation of sums, they are entitled to file a complaint against such plan to a court within a period of 7 days after the plan has been given. A court shall consider the complaint within 20 days.

35.4. Considering the availability of assets for allocation to be sold, a

court may, by the request of a trustee, extend the period set in accordance with 35.2 of this law.

35.5. Claims shall be satisfied in the following order:

35.5.1. completion of payments for causing damage to life or health of others;

35.5.2. remuneration or wages and other expenses incurred by the trustee by the consent of a court or the meeting of creditors (Board); or expenses incurred within the power granted to the trustee;

35.5.3. claims deriving from the contracts concluded during the rehabilitation period;

35.5.4. secured claims;

35.5.5 ordinary claims;

35.5.6. wages and salaries deriving from the employment contracts;

35.5.7. court expenses; and

35.5.8. the others.

35.6. If the amount earned from the sale of the debtor's asset is insufficient to cover the claims in whole, the remaining class of claims shall be paid in accordance with its order of priority after the first class of claims are paid in full. Sums to be distributed among creditors with the same priority class are insufficient to provide payment in full, the amount available shall be distributed on a pro rata basis.

35.7. If the sums obtained from the sale of property under pledge are insufficient to cover the claims in whole, the remaining part of claims shall be transferred to the class of ordinary claims.

35.8. Claims which have been submitted late shall be satisfied in the order set in 35.4 of this law if a court considers that the late submission had good reasons and the later extends the limitation period.

35.9. Any assets remaining after all claims have been paid shall be distributed among the debtor's investors (members) in accordance with a relevant laws.

### Article 36. Completion of Liquidation

36.1. A trustee shall present its report on distribution of sums to a court within a period of 20 days from the approval of the plan of distribution, if such plan has not become the subject of a complaint; or 40 days if the plan has become the subject of complaint.

36.2. A court shall introduce with the trustee's report and complete a liquidation if the following conditions exist:

36.2.1. all claims have been satisfied in full or in the full amount of assets of the debtor and assets left after the distribution;

36.2.2. all assets of the debtor have not been sold, however, claims have been completely satisfied from the sale of sold assets;

36.3. Upon the completion of a liquidation, a trustee shall notify the State register office and remove the debtor from the State register.

### Article 37. Effects of Completion of Liquidation

37.1. Upon the completion of the liquidation, a debtor shall be released of the obligations of unsatisfied claims and its obligations to creditors shall be abandoned.

37.2. Paragraph 37.1 of this law shall not apply to a debtor who became intentionally insolvent.

### Article 38. Implementation of Court Order to Liquidate the Debtor

38.1. The meeting of creditors shall decide whenever a court order to liquidate the debtor shall be carried out under the court supervision, or with its involvement. The decision of the meeting shall be passed by a majority of more than two thirds of the votes cast, representing holders of claims attending such meeting.

38.2. A trustee shall have all rights and responsibilities in accordance with this law except 12.11 of this law, when a decision as stated in 38.1 of this law has been passed.

38.3. A decision of the trustee shall bind the debtors and creditors.

Chapter Five  
Miscellaneous

Article 39. Liabilities for Violation of the Law

39.1. If a breach of the Bankruptcy Law does not constitute a criminal offense, a court shall impose the following administrative penalties:

39.1.1. for failure to comply with requirements of the trustee without a reason, to fine debtors, creditors or any other relevant persons an amount of between 20,000-50,000 togrogs;

39.1.2. for concealing or assisting to conceal documents, and property of the debtor if the person knew that the court decision on institution of a bankruptcy proceeding has been issued or was going to be issued, to fine such person responsible for that default in amount of between 40,000-60,000 togrogs;

39.1.3. for using its powers and duties in excess of what was granted or using them for own benefit, and for disclosing the secrets of others in violation of relevant law in amount of between 40,000-60,000 togrogs;

39.1.4. for fraudulent statement which is required to be presented in accordance with 34.5 of this law to fine the debtor in amount of between 30,000-50,000 togrogs.

**APPENDIX B  
BANKING LAW OF MONGOLIA**

**Chapter One  
General Provisions**

**Article 1. Purpose of the law**

1. The purpose of this law shall be the licensing of banks and banking activities, the revocation of licenses, the establishment of general principles of management, organization and banking activities, and the regulation of relations concerning the supervision, reorganization, conservatorship, receivership and liquidation of banks.

**Article 2. Legislation on banking activities**

1. The legislation on banking activities is comprised of the Constitution of Mongolia, the Central Bank Law (Bank of Mongolia), this law and other relevant legislation which is consistent with them.

2. If an international treaty to which Mongolia is a party is inconsistent with this law, then the provisions of the international treaty shall prevail.

**Article 3. Definitions**

1. A legal person engaged in the business of receiving money on deposit (hereinafter referred to as "deposit of money"), extending loans on its own account (hereinafter referred to as "loans", and/or providing current account services (hereinafter referred to as "transaction") for profit shall be deemed as a bank.

2. In this law, the following terms shall have the following meanings:

2.1. "related person" to a bank shall include the chairman or members of its board of directors, the executive director or an officer of the bank, the holder of a certain interest and/or shareholder of the bank or any person who is related to such persons (father, mother, wife, husband, brother, sister, children and their family members);

2.2. "management" means a meeting of the members or the board of directors and/or executive director of a bank;

2.3. "holder of a certain interest and/or shareholder" means a legal person or an individual who has direct or indirect holding of an interest that rep-

resents the equivalent of 5 percent or more of the equity of a bank.

#### Article 4. Types of bank

A bank may be: State, privately or jointly owned, depending on the ownership of its equity fund; a joint-stock or limited liability business entity, depending on its incorporation; and a general or specialized bank, depending on the type of banking activities it performs.

#### Article 5. Non-influence on bank activities

1. Unless the law specifically provides to the contrary, the Bank of Mongolia and/or State administrative bodies of any level shall not interfere with the activities of a bank or illegally influence the management or decisions of a bank.
2. A bank shall not bear responsibility for obligations undertaken by the State, and the State shall not bear responsibility for obligations undertaken by a bank unless the State specifically assumes that responsibility.

### Chapter Two Banking Activities

#### Article 6. Banking activities

1. A bank may, with the consent of the Bank of Mongolia, engage in the following activities in addition to accepting deposits of money and providing payment services, loans and transaction services:
  - 1.1. providing payment guarantees to third parties;
  - 1.2. purchasing, selling, depositing and placing on deposit foreign currency;
  - 1.3. purchasing, selling, depositing and placing on deposit precious metals and stones;
  - 1.4. receiving valuables into custody;
  - 1.5. conducting foreign exchange and transaction services;
  - 1.6. issuing, buying and selling securities;
  - 1.7. dealing in financial leasing transactions;

1.8. providing investment financial consultancy and/or information services;

1.9. engaging in such other financial activities or services as are not prohibited by the laws and which are licensed by the Bank of Mongolia.

2. No one shall engage in activities related to a deposit of money, the provision of loans or transaction services or in the activities set out in sub-paragraphs 2, 3 and 5 of paragraph 1 of this article without a license issued by the Bank of Mongolia.

#### Article 7. Prohibited activities for banks

1. No bank shall engage in any activities for profit other than the banking business. This provision shall not apply in the case of holding temporarily and selling any property token as security for a loan.

2. The chairman and members of the board of directors, the executive director and officers of a bank shall not disclose or use any information which is considered by the bank, its customers, and/or third parties to be confidential where that information was obtained in the course of their services to the bank, except in the following cases:

2.1. with the written consent of the person about whom the confidential information relates;

2.2. on the demand of the Bank of Mongolia; or

2.3. in any other cases provided for at law.

3. The information disclosed by the bank about a loan extended by it shall not disclose any of confidential information described in paragraph 2 of this article.

4. In addition to the prohibitions in paragraph 1 of this article, a bank shall not:

4.1. enter into transactions or engage in practices of any kind that would provide the bank, alone or together with others, a position of dominance in the money or financial markets, or use unfair or unjust means to gain advantage over any other banks for itself or any third party;

4.2. engage in the market for land; or



4.3. make a false or misleading advertisement or statement relating to its activities.

#### Article 8. Deposits of money

1. A bank may receive money by way of deposits from citizens of Mongolia or foreign countries, or stateless persons (hereinafter referred to as "individuals") or any legal persons and may pay interest as agreed with such individuals or persons.

2. Any operations that relate to deposits and insurance services on deposits shall be regulated by law.

#### Article 9. Loan

1. A bank may provide loans to individuals or legal persons on terms established by the bank. A Bank shall determine the interest rates on its loans.

2. If a debtor does not repay to the bank the loan instruments or interest on a loan the bank may, in accordance with a Court judgement transferring the ownership of the property or shares in the capital of a debtor to the bank, take possession of such property or shares. This provision shall not apply to the case provided for in paragraph 4 of article 16 of this law.

3. Activities related to the making of loans by banks shall be regulated by law.

#### Article 10. Transaction services

1. Services relating to transaction services for customers shall be rendered on the basis of an agreement between the bank and the customer.

2. A bank shall make transactions from a customer's account with the consent of the customer and within the limits of remaining balance. Transactions made pursuant to outstanding Court judgements, by the decision of a receiver or pursuant to a contact or payment order which has been sired by the customer and by which the customer has agreed to pay the debt without any dispute shall be regarded as transactions made with the consent of the customer.

3. Banks shall determine their own fees for customer services.

4. Inter-bank settlements by banks shall be conducted through their ac-

counts at the Bank of Mongolia.

5. Activities relating to transaction services shall be regulated by law.

#### Article 11. Guarantees of payments

1. A bank may provide guarantees of payments to third parties on terms to be agreed and within the limits set out in article 16 paragraphs 1 to 3.

#### Article 12. Custody of valuables

1. A bank may offer a service for the safe custody of valuables (valuables as regarded by customers) to its customers and it shall determine the conditions for the custody service contact in accordance with legislation.

#### Article 13. Foreign exchange transaction services

1. Banking activities relating to foreign payments and buying or selling foreign currencies and other financial instruments shall be regulated by the law.

#### Article 14. Issuing, purchasing and selling of securities

1. Banking activities relating to the purchasing, selling or taking of equity securities as collateral for a loan shall be undertaken within the limit described in article 16 paragraph 4 of this law and shall be regulated by the relevant law.

2. With the authorization of the Bank of Mongolia, a bank may issue securities valid for up to one year to be laded on the money market.

#### Article 15. Requirements for banking activities

1. A bank shall comply with the following requirements:

1.1. to maintain its compulsory reserves and liquid reserves in the forms; and

1.2. amounts required pursuant to the regulations issued by the Bank of Mongolia and to safeguard customers' deposits of money and to disburse funds on demand by a customer;

1.3. to maintain its capital and funds to meet the possibility of losses from defaults on loan repayments and to comply with other requirements and

criteria relating to foreign currencies and other transactions in accordance with regulations issued by the Bank of Mongolia;

1.4. not to restrict customers from using the services of more than one bank;

1.5. not to make transactions from a customer's account without the consent of the customer;

1.6. not to require any person to take any financial service or any goods or other service from an affiliate as a pre-condition to the provision of banking services.

1.7. A bank shall provide its customers with true information relating to its activities and financial position in accordance with the reporting standards and forms issued by the Bank of Mongolia.

#### Article 16. Restrictions on banking activities

1. The total value of loans and guarantees provided to one person or group of related persons shall not exceed 20 percent of the capital of the bank.

2. The total value of guarantees of payments provided shall not exceed the total amount of the capital of the bank.

3. The maximum value of loans and guarantees provided to a shareholder, the chairman, a member of the board of directors, an executive director or a bank officer or any related person thereof shall not exceed 5 percent of the capital of the bank, and the total amount of loans and guarantees provided to all shareholders, directors, bank officers and related persons thereof shall not exceed 20 percent of the capital of the bank. The provision of loans or guarantees to the above mentioned persons shall meet the following requirements:

3.1. loans are not to be made available to such persons on terms and conditions or at interest rates which are more favorable than those generally applicable;

3.2. shares in the bank 'elf are not to be accepts s security for a loan;

3.3. a shareholder is not to be permitted to serve in any management position in the bank if a loan made by the bank to that person remains unpaid for more than six months beyond the due date of the loan.

4. The total amount of shares and securities of similar nature in a business entity which may be purchased or held by a bank in lieu of repayment of credit shall not exceed the lesser of 20 percent of the capital of the bank or 5 percent of the total amount of the outstanding shares of that business entity.

### Chapter Three Licensing of Banks

#### Article 17. Licensing of banks

1. Individuals, legal persons or organizations, with the exception of those financed by the State budget, public charity fund-raising or religious organizations, shall be entitled to incorporate a bank.

2. The Bank of Mongolia shall have the sole right to issue licenses to banks.

3. A license is required from the Bank of Mongolia for the establishment in a foreign country of a bank or a branch or representative of a bank.

#### Article 18. License applications

1. The founders of a bank shall submit the following documents to the Bank of Mongolia in order to obtain a license:

1.1. an application for a license;

1.2. founding agreement;

1.3. the charter of the bank;

1.4. an economic feasibility forecast;

1.5. the name and address of the founders and persons who will own 10 percent or more of the capital of the bank and audited financial statements of such business entities for the past two years;

1.6. a detailed description of the management, staff, technical facilities and premises of the proposed bank in the form prescribed by the Bank of Mongolia.

2. The Bank of Mongolia may request an applicant to submit additional information within the framework of the required documents if, in the

opinion of the Bank of Mongolia, the documents submitted pursuant to paragraph 1 of this article are insufficient or unclear. In case of necessity the Bank of Mongolia may apply to the Court or other judicial or supervisory institutions to require a person or entity to provide information or materials regarding the promoters, shareholders, or proposed management of the bank.

#### Article 19. Additional requirements for licensing of a bank with foreign investment

1. The founders of banks or of branches or representative offices of banks with foreign investment shall, in addition to the documents described in article 18, submit the following documents to the Bank of Mongolia:

1.1. the decision of the foreign legal person, bank or financial institution to establish a bank or a branch or representative office of a bank in the territory of Mongolia;

1.2. a copy of the registration documents of the foreign legal person, bank or financial institution and its financial statements for the past 3 years, together with an auditor's opinion; and

1.3. such additional information that may be required pursuant to other laws.

#### Article 20. Granting of a license

1. Upon receipt of an application for a license and of other documents, the Bank of Mongolia shall determine whether the following requirements are satisfied:

1.1. that the capital of the proposed bank will be sufficient for the conduct of effective and stable banking activities;

1.2. the knowledge, experience and integrity of the executive director and administrators of the proposed bank are appropriate for the conduct of the banking business in a fair and profitable manner;

1.3. the establishment of the bank will not have an adverse effect on the economic security of Mongolia.

2. The Bank of Mongolia shall only accept applications for a license which comply with articles 18 and 19. If additional information is required to make the decision, the date on which the additional documents

are submitted shall be deemed to be the date of receipt of the application for a license.

3. The Bank of Mongolia shall grant or deny the application within 30 days from the date of receipt of an application and shall inform the founders of its decision.

4. The Bank of Mongolia shall, in accordance with regulations issued by the Bank of Mongolia, only license a bank to commence the types of banking activities provided for in article 6 if the bank has, within six months of receipt of its license, attained the requisite minimum amount of capital.

#### Article 21. Refusal to issue a license

1. The Bank of Mongolia shall refuse to issue a banking license in the following circumstances:

1.1. the application does not comply with the requirements set forth in articles 17, 18, 19 and 20 of this law;

1.2. the charter of the bank is inconsistent with the law;

1.3. the Bank of Mongolia is not satisfied that the proposed bank will have or obtain sufficient capital, or if the materials submitted were false or any administrator of the bank has a conviction for a criminal offense.

#### Article 22. Registration of banks

1. All banks licensed by the Bank of Mongolia shall be registered at the State Registry pursuant to articles 17, 18, 19 and 20 of this law.

2. Branches and representative offices of a bank shall obtain a license from the Bank of Mongolia if the bank of which they form part or which they represent does not have a license issued by the Bank of Mongolia which has been registered at the State Registry. If a licensed bank or a bank which has applied for a license wishes to open a branch or representative office it shall notify the Bank of Mongolia who shall ensure that the bank's license at the State Registry is amended accordingly.

3. Public notice shall be given of the registration of a bank.

**Article 23. Name of bank**

1. The name of a bank shall consist of its own name and the word "bank".
2. It is prohibited to use the name "bank" without having a valid banking license.
3. The name and the location of the bank shall only be changed with the consent of the Bank of Mongolia.
4. Branch offices of a bank shall use the name of that bank.

**Article 24. Grounds for revocation of licenses**

1. The Bank of Mongolia shall revoke a bank's license on the following grounds and give notice of such revocation to the public:
  - 1.1. upon a declaration of bankruptcy in respect of the bank by a competent organization;
  - 1.2. if it is shown during the first year of registration of a bank that the license has been obtained on the basis of false information;
  - 1.3. if the bank does not obtain the minimum amount of required capital within the established period of time;
  - 1.4. if the bank has not commenced banking operations within one year of receipt of its license;
  - 1.5. if the shareholders of the bank make an independent decision to terminate its operations by means of liquidation or restructuring.
2. By revoking the license to establish a bank, all licenses which were previously given to the bank shall become invalid.

**Chapter Four**  
**Banking Management, Structure and Organization**

**Article 25. Bank management**

1. A general meeting of shareholders shall be the supreme authority of a bank.
2. The following matters shall be subject to decision at a general meeting

of shareholders:

- 2.1. alteration of or amendment to the charter of the bank;
  - 2.2. changes in the structure and size of the capital of the bank;
  - 2.3. reorganization and dissolution of the bank;
  - 2.4. consideration and approval of the financial reports and balance sheets prepared by an auditor';
  - 2.5. election and removal of the chairman and members of the board of directors, determination of their power and responsibilities and their salary or remuneration, approval of the annual budget and discussion of the financial reports;
  - 2.6. appointment of member(s) of the auditing board from the list of chartered accountants, determination of their salary or remuneration and consideration of their reports.
3. The board of directors of the bank shall have the following powers:
- 3.1. to approve the bank's targets and a business plan for future years;
  - 3.2. to determine the bank's management and organizational structure and administrative expenses;
  - 3.3. to establish funds, other than capital or reserve funds in order to protect the bank from losses from defaults on loan repayments, and to establish a procedure for applying such funds;
  - 3.4. to appoint and dismiss the executive director on the basis of an employment contract with him/her and to supervise his/her activity;
  - 3.5. to define the powers and responsibilities of the executive director in relation to disposal of the bank's assets;
  - 3.6. to call a general meeting of shareholders and to make recommendations at the general meeting of shareholders on the matters referred to in paragraph 2 of this article.
4. The procedures of the board of directors shall be governed by the charter of the bank.



5. Matters relating to the procedures of general meetings of shareholders and meetings of the board of directors shall be governed by articles 43, 44, 45 and 47 of the Partnership and Company Law of Mongolia.

6. The executive director shall manage the bank's day-to-day operations in accordance with the law, the procedure of the bank and the terms of his/her employment contract.

7. The executive director of a bank shall have the following duties and responsibilities:

7.1. to place the interests of the bank and its customers before his/her own personal interests. In fulfilling that duty, he/she shall take care to commit all his/her professional efforts;

7.2. to keep confidential and not to use for personal or third party gain any information on customers of the bank that he or she becomes aware of in the course of his/her service to the bank;

7.3. to make written disclosure to the board of any conflict of interest as soon as a conflict of interest becomes apparent. In particular a conflict of interest shall exist whenever the executive director or any related person has a financial interest in an entity wishing to transact business with the bank;

7.4. to leave any meeting at which a matter involving such a conflict of interest is to be discussed or decided upon, and to refrain from voting on any such matter.

#### Article 26. Charter of a bank

1. The charter must state the following:

1.1. the name, location and address of the bank;

1.2. the type of banking business to be provided;

1.3. the amount of the capital;

1.4. the structure of the management and organization;

1.5. procedures for meetings of shareholders and for the activities of the board of directors;

- 1.6. the procedure for internal auditing;
  - 1.7. procedures for the protection of the reputation of the bank and its officers and the security and social insurance of the bank's staff.
2. Any alteration or amendment to the charter of a bank shall be registered with the Bank of Mongolia.

#### Article 27. Banking capital

1. A bank shall have its own capital. The bank's capital shall consist of paid-in capital and other funds.
2. The paid-in capital of a bank shall consist of its shareholder's contributions and the minimum amount of total capital shall be 400 million togrogs.
3. Foreign investors may make investments in the banking sector using profits gained from investments made in the non banking sector.
4. A bank shall obtain the minimum amount of required capital within six months of the date of receipt of the license.
5. A bank shall inform the Bank of Mongolia of any decision to change its paid-in capital.
6. A bank shall determine the amounts of any decrease or increase in its capital in accordance with profits earned or losses accrued from banking activities and fluctuations in the amount of its compulsory reserve fund.
7. The Bank of Mongolia together with the Ministry of Finance shall issue procedures for the establishment of, and allocation of funds from, a reserve fund to cover losses that may accrue from defaults on loan repayments.
8. A bank shall establish its own procedures for establishment of funds, with the exception of the procedure referred to paragraph 7 of this article.
9. Shareholders shall be prohibited from withdrawing their contribution except by way of sale of their shares to others, any such sale to be subject to approval by the Bank of Mongolia. The Bank of Mongolia may refuse to grant its approval if the change that would result from sale of shares to the structure of the slaveholding in the bank would make it unduly difficult for the Bank of Mongolia to exercise its supervisory powers.

10. The financial liability of shareholders shall be limited to the amount of their contribution to the capital of the bank.

#### Article 28. Financial statements of banks

1. A bank's financial statements shall include the balance sheet, the profit and loss statement and any additional details required for those statements. The Bank of Mongolia may request additional or supplementary materials in relation to such statements.

2. A bank shall prepare its financial statements in such form and standard as shall be prescribed by regulations of the Bank of Mongolia and these statements shall be audited at least once a year by an auditor approved by the Bank of Mongolia.

3. A bank shall make public a summary of its audited financial statements. The forms for such publication shall be prescribed by the Bank of Mongolia and the Ministry of Finance.

#### Article 29. Taxation

1. A bank shall pay tax in accordance with the relevant laws of Mongolia.

2. The value of assets which are allocated to the funds which is to cover losses from defaults on loan repayments shall be deducted from the taxable income.

#### Article 30. General conditions relating to decisions made by a shareholder's meeting on restructuring and/or liquidation of a bank

1. Any decision to liquidate or restructure a bank must be made by a meeting of the shareholders and must have the consent of the Bank of Mongolia.

2. The following documents shall be submitted to the Bank of Mongolia in order to liquidate or restructure the bank:

2.1. the decision of the shareholders at a general meeting to restructure or liquidate the bank;

2.2. documents setting out the need for, the type, conditions, and period for the restructuring or liquidation. These documents shall also include the measures to be taken after the restructuring or liquidation, the period for completing those measures, the relevant financial statements prepared

by an auditor and discussed by the shareholders at the general meeting and any other information required;

2.3. the expected financial results and balance sheets projected for after the restructuring of the bank.

3. The Bank of Mongolia shall consider and decide on the application within 30 days of receiving the application and relevant documents, and announce the decision to the public. The date of receiving the application shall be determined in the manner provided for in article 20 paragraph 2 of this law.

4. The Bank of Mongolia may decline an application made pursuant to a decision made at a meeting of shareholders if the liquidation or restructuring of the bank would be inconsistent with legislation or would negatively affect the bank's customers.

5. The liquidation shall not commence prior to the decision of the Bank of Mongolia and shall be conducted in accordance with legislation.

#### Chapter Five Penalties and Other Enforcement Measures Against a Bank

Article 31. Enforcement measures against banks which breach the law

1. The Bank of Mongolia may take the following measures or impose the following penalties if a bank breaches this law or decisions made by the Bank of Mongolia on matters within its powers:

1.1. issue written warnings;

1.2. pass an order requiring remedial action to be taken by a fixed date;

1.3. limit or stop activities of the bank;

1.4. impose fines;

1.5. suspend temporarily or dismiss the executive director from office and stop his/her receipt from the bank of any remuneration or benefits;

1.6. impose a conservatorship;

1.7. appoint a receiver;

1.8. revoke the license of the bank.

Article 32. General principles in relation to enforcement measures

1. When imposing penalties and taking enforcement measures pursuant to article 3 1 of this law, the Bank of Mongolia shall exercise its sole discretion based on the particular circumstances of each case and shall apply the principal of equality so as to treat events with similar circumstances in the same way by imposing similar penalties or taking like enforcement measures.

2. A party may appeal to the Court if it considers that a penalty imposed or enforcement measure taken by the Bank of Mongolia is not justified.

3. The measures and penalties provided for shall not preclude the application of other penalties imposed on bank as provided in other laws.

Chapter Six  
Imposition of Conservatorship on Banks

Article 33. Imposition of conservatorship on banks

1. A conservatorship means the carrying out of administrative, organizational, financial and other measures as a package to improve the soundness of the financial condition of a bank or to improve its operations on the grounds of a determination by the Bank of Mongolia that the bank is likely to become insolvent or because of its failure after 3 months to fulfil the requirement of article 15 paragraph 1, subparagraphs 1 and 2, of this law.

2. The Bank of Mongolia shall appoint its plenipotentiary representative or a board of representatives (hereinafter referred to as "representative") to the bank in conservatorship to manage it for a period of up to one year. Procedures for the activities of the plenipotentiary representative shall be issued by the

3. Bank of Mongolia and be consistent with this law.

4. All expenses arising during the conservatorship shall be paid by the bank in conservatorship.

5. Shareholders of the bank have the right to apply to the Court in respect of the Bank of Mongolia's decision to impose a conservatorship on the bank within 10 days of such decision. Such an application to the Court

shall not be a basis upon which the conservatorship may be deferred.

#### Article 34. Decision on conservatorship of banks

1. The following items shall be included in the notice of the decision of the Bank of Mongolia to impose a conservatorship on a bank:

- 1.1. the name, location and address of the bank;
- 1.2. the grounds for imposition of the conservatorship;
- 1.3. the date of commencement of the conservatorship and its duration;
- 1.4. a list of restrictions imposed on the bank;
- 1.5. the full names of the representative.

2. The decision of the Bank of Mongolia to impose a conservatorship shall be made public.

#### Article 35. Appointment of plenipotentiary representatives

1. The Bank of Mongolia may appoint the plenipotentiary representative from its own staff or he/she may be some other person.

2. The Bank of Mongolia shall determine the salary of the plenipotentiary representative.

3. The plenipotentiary representative shall conduct his/her activities in compliance with the law and any procedures and/or guidelines issued by the Bank of Mongolia pursuant to this law.

4. The Bank of Mongolia has the right to remove a plenipotentiary representative at any time.

5. A plenipotentiary representative shall be liable to the bank for any losses arising from his/her wrongful act. The plenipotentiary representative shall not be liable for losses related to routine banking risks.

#### Article 36. Measures to be taken during conservatorship and powers of the representative

1. During the period of conservatorship the following measures shall be taken by the Bank of Mongolia:

- 1.1. suspension of the rights of shareholders;
- 1.2. suspension of the powers of the board of directors, executive director and management of branches and subsidiaries of the bank;
- 1.3. transfer for certain period of time of all rights in respect of the management of the bank to a plenipotentiary representative.
2. A plenipotentiary representative shall have the following rights and obligations:
  - 2.1. to make independent decisions with respect to the activities of the bank;
  - 2.2. to partially or completely suspend fulfillment of obligations in respect of deposits and borrowed funds during the period of conservatorship, if it considers it necessary;
  - 2.3. to amend loan, deposit or other agreements concluded between the bank and its customers which he/she considers contain provisions that are not standard and which have had an adverse effect on the interests of the bank;
  - 2.4. to sign agreements and documents on behalf of the bank;
  - 2.5. to initiate legal proceedings on behalf of the bank;
  - 2.6. to terminate or amend contracts of employment and to employ any necessary employees for a certain period of time.
3. The bank and its branches and subsidiaries shall implement the decisions of the plenipotentiary representative. The Bank of Mongolia shall be responsible for the decisions of its representative.
4. The executive director of a bank in conservatorship shall make the activities report and income statement available to the plenipotentiary representative.
5. All transactions which are made on behalf of the bank but without the permission of the plenipotentiary representative shall be considered invalid.

6. If the bank's financial condition improves or if its operations are strengthened during the conservatorship, the Bank of Mongolia shall nullify the conservatorship and revoke all or some of the restrictions imposed on the bank's activities. All amendments which were made to the charter of the bank during the conservatorship shall remain in force.

## Chapter Seven Receivership of Banks

### Article 37. Receivership of banks

1. Receivership means the procedures to be applied in relation to the compulsory liquidation of a bank and under which a receiver is appointed to whom the powers of the administrators and management regarding the assets of the bank shall be transferred and pursuant to which the Bank of Mongolia shall revoke that bank's license.

### Article 38. Liquidation of a bank

1. The Bank of Mongolia shall place a bank in liquidation if any of the following circumstances exist:

1.1. the bank is unable to conduct its activities normally during a period of a conservatorship;

1.2. the bank is unable to meet the demands of its depositors or to pay its obligations;

1.3. the bank's liabilities exceed its assets, calculated according to rules issued by the Bank of Mongolia;

1.4. the Bank of Mongolia considers a circumstance of the type described in subparagraph 1 or 2 of this article to be imminent or otherwise unavoidable.

2. The Bank of Mongolia shall appoint a receiver to take possession and control of a bank which is placed in liquidation pursuant to paragraph 1 of this article.

### Article 39. Appointment of receiver

1. The Bank of Mongolia shall appoint a receiver from its own staff or may appoint a person who complies with the following requirements:



1.1. in the case of an individual, has the requisite professional knowledge, experience and personal integrity;

1.2. has not been held liable in a civil proceedings for illegally using or obtaining property and has not been convicted of a crime;

1.3. has not defaulted on any obligations to pay loans to the bank;

1.4. does not have any relationship directly or via any related persons with the shareholders, chairman, members of board of directors, executive director or other officers of the bank;

1.5. shall, in the case of a corporate entity, have sufficient property and resources.

2. The receiver shall be accountable to the Bank of Mongolia and shall be subject to dismissal by the Bank of Mongolia for failure to perform the functions of a receiver.

3. The remuneration of the receiver shall be set by the Bank of Mongolia and shall be paid by the bank being placed in receivership.

4. The receiver shall comply with all regulations, orders, and rules issued by the Bank of Mongolia.

#### Article 40. Immediate effects of receivership

1. Upon revocation of the license issued by the Bank of Mongolia and the appointment of a receiver:

1.1. all powers of the bank and its management to dispose of bank assets, shall be vested in the receiver;

1.2. any period of time on the expiration of which a claim or right of the bank would expire or be extinguished, shall automatically be extended by a period of six months from the date of such appointment.

2. During the receivership no payment shall be made from income earned from sale of the assets of the bank.

3. Every payment or transfer of an asset or propel of the bank that was made within a period of three months before the receiver takes possession of the bank (or within a period of twelve months before the receiver takes possession of the bank if the payment or transfer was made to a shareholder, the chairman, a member of the board of directors, the executive director, an officer of the bank or any other related persons) shall be void if it has the intent or effect of bestowing a preference on the recipient over other creditors provided however, that this provision shall not apply to:

3.1. the payment of deposits in an amount per depositor not exceeding a limit established by the Bank of Mongolia;

3.2. the transfer of an asset or property of the bank that is equal to the fair market value of the asset or property transferred;

3.3. the payment of ordinary remuneration and benefits (not to include bonuses or special payments) to administrators or employees of the bank.

#### Article 41. Legal action against appointment of a receiver

1. Any of the following parties may appeal the decision to appoint a receiver by filing proceedings with a Court within a period of 30 days of the date on which the receiver was appointed if it considers that there are no grounds for such appointment:

1.1. shareholders of the bank holding not less than 25 percent of paid-in bank shares;

1.2. persons holding not less than 25 percent of the all deposits with the bank;

1.3. creditors holding not less than 25 percent of the claims of creditors.

2. The appeal of a decision to appoint a receiver pursuant to paragraph 1 of this article shall not be a reason to postpone or discontinue actions by the receiver.

3. The Court shall decide the appeal according to the law.

#### Article 42. Immediate actions by receiver to announce receivership

1. A receiver appointed under this law shall, within 24 hours of such appointment, post in each office of the bank a notice announcing that the

bank has been placed in receivership and that the bank's license has been revoked. Customers shall also be given such notice.

2. The receiver shall make a similar notice available to the public and shall transmit copies of such notices to the Bank of Mongolia.

#### Article 43. Powers and duties of receiver

1. A receiver shall have the following powers:

1.1. to continue or discontinue certain operations of the bank;

1.2. to stop or limit the payment of obligations of the bank;

1.3. to re-set the rates of interest on deposits, provided that the revised rates shall not be less than the minimum interest rates at that time;

1.4. to cancel agreements to invest and to make, changes to the interest rates on loans and service fees and their duration;

1.5. to terminate any contracts of employment and other contracts concluded by the bank and to hire required employees;

1.6. to make public information which is considered necessary;

1.7. to conclude agreements on behalf of the bank;

1.8. to initiate legal actions on behalf of the bank and to represent the bank at Court sessions;

1.9. to assess and sell property kept as security for a loan;

1.10. to make any payment on behalf of the bank, within the limits established by the Bank of Mongolia.

#### Article 44. Preliminary procedures for liquidation

1. The receiver shall undertake the following measures without delay:

1.1. prepare an inventory of the assets and property of the bank that are to be sold, and make a copy of that inventory available to the public;

1.2. procure the return of assets and property of the bank held by others',

- 1.3. return valuables deposited with the bank to their owners;
  - 1.4. fix and announce the dates by which all claims against the bank must be received.
2. The receiver shall, within two months of the last day for receiving the claims specified in the paragraph 1, sub-paragraph 4 of this article, establish the form and amount of settlement of claims and a schedule and order of claims and announce this to all creditors.

#### Article 45. Priorities in payment of claims

1. The receiver of the bank shall follow the order of priority listed below when settling claims from the income received from sale of the assets of the bank:

- 1.1. completion of Court ordered payments to be made by the bank to others for damage caused to their life or health;
- 1.2. expenses incurred by the receiver's operation;
- 1.3. credits extended to the bank after the appointment of a receiver;
- 1.4. deposits and account payments and interest payable to citizens;
- 1.5. deposits and account payments and interest payable to legal persons;
- 1.6. repayment of loans extended by others;
- 1.7. other claims against the bank.

2. If the amount earned from the sale of the bank's assets is insufficient to cover the claims the applicable principle shall be that each class of claim shall be paid in full in accordance with its order of priority.

3. If the amount available for payment for any class of claims listed above is insufficient to provide payment in 111, the amount available for payment of that class of claims shall be distributed on equal percentage basis between the claimants within that class.

4. Any assets remaining after all claims listed in paragraph 1 of this article have been paid shall be distributed among the shareholders in proportion to their shares in the bank on the basis of priority of superior over normal rights.

**Article 46. Receiver's actions to dispose of the bank and its assets**

1. The receiver shall take the following actions to dispose of the bank's assets within the following periods:

1.1. arrange for the assumption of all or part of the bank's liabilities, as well as the bank's assets by other banks within one year;

1.2. sell the assets of the bank within two years.

2. In order to carry out a transaction provided for in paragraph 1, subparagraph 1 of this Article, the receiver may:

2.1. reduce liabilities and deposit payments so that depositors or creditors receive not less than they would have received in a liquidation;

2.2. deduct loan repayments from payments owed by the bank to depositors or customers;

2.3. when administering and disposing of the assets of the bank the receiver shall ensure that depositors are given first priority.

**Article 47. Conclusion of receivership**

1. Once all assets of a bank have been disposed of; the receiver shall prepare a statement and submit it to the Bank of Mongolia. After the approval of this statement by the Bank of Mongolia and its presentation for public reviews the receivership and liquidation shall be considered concluded.

2. Any unclaimed funds and property remaining from the receivership and liquidation of the bank shall remain with the Bank of Mongolia.

3. It shall be prohibited for the Bank of Mongolia to finance any activities relating to the receivership of a bank.

4. Any information on unsettled claims remaining after the liquidation of the bank shall be kept with the loan information network.

**Article 48. Other provisions**

1. Issues regarding receivership and compulsory liquidation of a bank shall be regulated by this law.

## Chapter Eight Liabilities

Article 49. Legal liabilities imposed by supervisors appointed by the Bank of Mongolia for violation of the law

1. If a breach of the banking legislation does not constitute a criminal offence, the following penalties shall be imposed by a supervisor appointed by the Bank of Mongolia:

1.1. for opening a bank and/or a bank branch without a license - confiscation of all income illegally earned and a fine of 200,000 to 250,000 togrogs;

1.2. for engaging in banking activities without obtaining a license from the Mongolian bank - confiscation of all income illegally earned and a fine of 150,000 to 200,000 togrogs;

1.3. for failure to comply with banking legislation or decisions of the Governor of the Bank of Mongolia for implementing the law - a fine of 10,000 to 50,000 togrogs for officers of a bank and of 50,000 to 200,000 togrogs for banks;

1.4. for intentionally impeding supervisory actions - a fine of 5,000 to 20,000 togrogs for citizens and of 5,000 to 30,000 togrogs for bank officers;

1.5. for concealing payment and settlement documents or delaying transactions - a fine of 10,000 to 50,000 togrogs for bank employees or officers and of 100,000 to 250,000 for banks;

1.6. for not submitting the balance sheets, periodic reports, and other requested materials in time in accordance with the related regulations to the Bank of Mongolia - a fine of 10,000 to 30,000 togrogs for bank officers and of 50,000 to 200,000 for banks;

1.7. for failure to comply with requirements described in article 15 of this law, - a fine of 100,000 to 200,000 togrogs for banks.

2. The fines shall be paid to the State budget.

3. Financial losses resulting from a breach of this law shall be recovered in accordance with the Civil Law.

4. If the penalties imposed in accordance with paragraph 1 of this article are considered to be unfair, relief may be sought by application to the administrative forums or the Courts.

Article 50. Coming into force

This law shall come into force on 1 October 1996.

Vice-chairman of the State Ih Hural of Mongolia

Ts Elbegdorj

Ulaanbaatar

September 3, 1996

**APPENDIX C  
CIVIL CODE OF MONGOLIA**

**PART ONE GENERAL PRINCIPLES**

**Chapter One  
General Provisions**

.....

**Article 21. Legal Persons**

1. Legal persons shall be an organization which has a separated property falling within its powers to own, to possess, use and dispose and is able to acquire the rights and create liabilities by its own actions and, is liable for its obligations arising out of own activities with its own assets as well as sues and is sued in its own name at the court and arbitration bodies.

2. Legal persons may be organizations which main goal is to make a profit or non-profit organization which has the other goals provided by the Law or its charter.

3. The Law may provide that the founder or participants of a legal person might or might not retain their rights in respect with its separate property.

4. Companies, partnerships, cooperatives as well as institutions financed by owners thereof shall be legal person in which the founders or participants retain their rights in respect with the separate property thereof.

5. Public organizations or religious organizations and foundations established for charitable and other purposes shall be a legal person in which the founders or participants do not retain their rights in respect with the separated property thereof.

**Article 22. Civil Law Capacity Of Legal Person**

1. Legal person shall have the rights and duties which follow the goals of activities set forth in their foundation documents.

2. Legal persons may carry out any activities which do not contradict the goals of their activities and which are not prohibited by the Law.

3. Legal persons shall carry out certain activities which are provided by the law only on the basis of special authorization by the competent authorities.



4. The rights of a legal person may be restricted subject to the grounds and procedures prescribed by the law.

#### Article 23. Establishment Of Legal Person And Foundation Documents

1. Citizens, the state and its competent authorities, as well as other legal persons, and if it is stipulated by the law, foreign citizens and organizations including stateless persons, may found a legal person under the procedures prescribed by the law.

2. Foundation documents shall be formalized for the establishment of legal persons and their types, forms and procedure for formalization shall be determined by law.

3. Decisions by the competent authorities or charter or contract for foundation may be foundation documents of legal person.

4. The charter of a legal person shall be adopted by its founders (participants) or authorized organs thereby.

5. A charter shall contain the name, place of business, goals of activities of the legal person and organs of legal person and their powers as well as the other items needed for the type of legal person in question under the law.

6. A contract on the foundation of a legal person shall be concluded if it is provided for by the law.

7. Members or participants of a legal person shall determine the procedure for joint actions aimed at foundation thereof and conditions on the transfer of their properties to the ownership of the legal person which is non-owner thereof or at its powers to possess, use and dispose under Article 88 of this Article and on participation in its activities by the contract on foundation of legal person. This contract also shall contain the procedure and conditions on management of the activities of legal person and withdrawal therefrom, joint actions of founders, principles of distribution of profits and losses and the other provisions.

8. A legal person is subject to state registration if it is provided by the law.

9. Where the legislative requirements are not met, then the registration agency shall refuse the registration of legal person with the state registry. If there is objection to such decision on refusal, then a complaint may be

filed to the court.

10. Legal persons which are subject to registration under the law shall be considered to be founded upon registration with the state registry, and the other legal persons shall be considered to be founded upon decision by the competent authorities and the adoption of their charter thereby.

11. Founders shall be liable for the obligations arising from the activities prior to the establishment of a legal person under the law.

#### Article 24. Name And Place Of Business Of Legal Person

1. Legal persons shall have a business name. The name of a legal person may not be similar to that of another legal person which has been previously entered in the state registry.

2. The Registration Agency shall keep a State registry of names of legal persons.

3. Legal persons may have their own symbol and trademarks.

4. A court shall decide on disputes arising in connection with the name, symbol, and trademark of a legal person.

5. The place of business of a legal person shall be determined by the place where its head office is located.

#### Article 25. Organs Of Legal Person

1. Legal persons shall participate in the civil law relations through their organs.

2. The legal status of organs of a legal person shall be determined by the law or the foundation documents thereof.

#### Article 26. Subsidiary And Representative Office Of Legal Persons

1. A legal person may set up its subsidiary or representative office if it is provided by the law and its foundation documents.

2. Subsidiaries shall be a special unit which is located at the other place than the place of business of a legal person and exercise all or part of its functions.

3. Representative offices shall be an unit which is located at the other place than the place of business of a legal person, and protects its legitimate interests and commits the legal actions such as conclusion of transactions on behalf of the former.
4. The rights and duties of subsidiary and representative offices shall be determined by their charter.
5. Executives of subsidiary and representative offices shall carry out their activities on the basis of authorization issued by a legal person thereto.
6. Subsidiaries may have the legal personality.

#### Article 27. Liabilities Of Legal Person

1. A legal person may be liable for its obligations with all of its assets.
2. Unless otherwise stipulated by the law or foundation documents, the founders of a legal person or owners of its assets shall not be liable for obligations undertaken by the legal person, and a legal person shall not be liable for obligations undertaken by its founders and owners.
3. Legal persons which are financed by an owner and have the right to possession, use and disposal of such property shall be liable for obligations with their cash. In case such cash is insufficient to satisfy the claims, then the owner shall be liable thereby
4. If legal persons become bankrupt due to illegal activities of the owner or the assets of the legal person are not enough to satisfy the claims by plaintiffs, then the owner shall be liable thereby.

#### Article 28. Winding Up Of Legal Persons

1. Winding up of legal persons is subject to reorganization or liquidation as provided by this Code.
2. Transactions concerning the reorganization and liquidation of legal persons on the grounds and procedure other than those provided by the law, which have been concluded with the other persons, shall be void.

#### Article 29. Reorganization Of Legal Persons

1. Upon decisions by owners of the property of legal person or designated organs thereby as well as of competent organs indicated in its foundation

documents, legal persons may be reorganized. (merger, joining, dividing, separation and transformation)

2. The relevant provisions of Article 31 of this Code shall be applicable to the reorganization of legal persons.

#### Article 30. Consequences Arising Out Of Reorganization Of Legal Persons

1. In case of joining or separation or transformation of legal person, its rights and liabilities shall be assigned by the legal person which has been created as a result of such joining or separation or transformation.

2. Where a legal person merges with another legal person, then the forger's rights and liabilities shall be assigned by the legal person which has been created by such merger.

3. Where a legal person is divided, then its rights and liabilities shall be assigned by the new legal persons proportionally unless otherwise provided by the law.

#### Article 31. Liquidation Of Legal Persons

1. Legal persons shall be liquidated on the following grounds: decision by owners or designated organs thereby, and by competent organs indicated in its foundation documents; declaration of bankruptcy or court decision on liquidation due to several or gross violation of laws; decision by legal person on the termination of its activities for such reasons as the expiration of operation period or achievement of the goals of its establishment thereby; any other grounds subject to law.

2. The Liquidation Commission, appointed by organs which have passed decision on liquidation shall be in charge of liquidation matters.

3. The liquidation Commission shall make public liquidation of the legal person.

4. The time limit for acceptance by the Liquidation Commission of applications by creditors shall not be less than two months or not exceed six months from the date of public notification of the liquidation of legal person in question.

5. Actions against a legal person under liquidation shall be satisfied in the following order: completion of payments due by the legal person to the

others for cause of damages to their life and health, payment of wages of the workers under a labor contract, payment of taxes and social insurance premiums, completion of payments with the other plaintiffs subject to law.

6. In case the assets of legal person under liquidation are Insufficient to service its debts, its available assets shall be distributed among the plaintiffs in proportion to the amount of due payments according to the proper sequence order.

7. When the available cash of legal person is insufficient, to satisfy the claims of plaintiffs then the Liquidation Commission may sell its other assets and complete its due payments under the law.

8. Upon satisfaction of claims by the plaintiffs, the remaining property shall be transferred to the statutory owners (founders) or legitimate persons if it is specially provided by the law.

9. Where there is no person to accept the property of legal person under liquidation, then it shall be transferred to the State ownership.

10. Legal persons which are subject to statutory registration with the state registry shall be considered to have winded up upon registration of their liquidation with the state registry, and other legal persons shall be considered to have winded up upon decision on their liquidation.

## Article 32. Companies

1. Companies shall be a legal person which has the registered capital consisting of contributions by its members (shareholders) and is liable for its own obligations and is liable for its own obligations within amount of its registered capital, and its member is liable therefore only within the amount of its contribution made to the registered capital.

2. Companies may have one member.

3. The limited liability company shall be a company in which its registered capital is divided into a number of stocks which are indicated in its foundation documents and which members have the prerogative to buy the interests of the other members. Each member shall be issued a certificate of stock.

4. Joint stock companies shall be a company in which its registered capital is divided into certain number of shares of equal value, and its share-

holders freely trade in their shares to the public and its shareholder has the prerogative to buy the shares of other shareholder.

5. A legal status of companies shall be determined by the law.

#### Article 33. Partnership

1. Partnerships shall be a legal person which has the assets consisting of contributions by its members and is liable for its obligations with these assets and the private properties of its members under the law.

2. A general partnership shall a partnership in which all of its members are jointly liable for obligations undertaken by such a partnership with their private property if the assets of partnership are insufficient therefore.

3. A limited partnership shall be a partnership in which at least one member (general partner) is fully liable for the obligations undertaken by such a partnership with its private property. The other members of partnership may have the limited liability.

4. The other forms of partnership may be determined by the law.

5. A legal status of partnerships shall be determined by the law.

#### Article 34. Cooperatives

1. Cooperatives shall be a legal person which carries out activities aimed at meeting the needs of its members by contributions of their labor and property and which members are liable for due parts of its obligations if the property of cooperatives is insufficient.

2. Foundation documents shall state the size of liability and procedures for distribution of earned profits to the members.

3. The legal status of cooperatives shall be determined by the law.

#### Article 35. Merger of Legal Persons

1. Companies, partnerships and cooperatives may merger with each other with a view of coordinating their activities, unless otherwise stipulated by the law.

2. A conglomerate may be set up in the form of a for-profit organization or non-profit organization.

3. Public organizations, religious organizations and foundations may set up a consortium only in the form of non profit organization.
4. Participants of the conglomerate shall retain their legal capacity personality.

#### Article 36. Public Organizations, Religious organizations and foundations

1. Public organizations shall be a body of citizens and legal persons who are united on a voluntary basis with the view of protecting their intellectual, material, non- material and other interests.
2. Religious organizations shall be an organization which goals are to meet the rituals, and behavioral and education needs of the religious community.
3. Foundations shall be an voluntary organization without membership which centralizes the grants and donations for social, cultural, charitable or other public benefit, and has the right to dispose them according to the procedures for their utilization set forth in its charter.
4. Public organizations, religious organizations, and foundations shall be non-profit organizations.
5. The legal status of public organizations, religious organizations and foundations shall be determined by the law.

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## PART TWO PROPERTY LAW

### Chapter Six General Provisions

#### Article 74. Types And Forms Of Property

1. There shall be private and public property in Mongolia.
2. The State shall create the conditions for free development of all types and forms of property and protect their inviolability by the Law.

#### Article 75. Owner

1. The State, citizens, and legal persons may be owners in Mongolia.

2. Foreign states, its citizens and legal persons as well as international organizations and stateless persons may be owners unless otherwise provided by the Mongolian law and international treaties of Mongolia.

3. An owner may transfer their rights to the other and the latter is entitled to possess or use and dispose of the things according to the utilization determined by the owner or the goals of its activities and charter.

#### Article 76. Objects Of Ownership

1. Things, intellectual values as well as some property rights which are subject to legalization may be objects of ownership.

#### Article 77. Immovable And Movable Property

1. Things shall be classified into immovable and movable properties since the former are objects of ownership.

2. An immovable property shall be the land and things which can not be utilized separately from it.

3. The competent State authorities which are located at the place where the immovable property is situated shall register it in conformity with the procedures prescribed by the Law.

4. Any other property except immovable property shall be movable property

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### Chapter Ten Private Property of Citizens of Mongolia

#### Article 140. Private property of citizens of Mongolia.

1. Citizens of Mongolia shall enjoy the right to have the private property.

#### Article 141. Objects of private ownership of citizens of Mongolia.

1. Citizens of Mongolia may privately own immovable property, movable property, intellectual values and rights except those which are prohibited to be under their ownership by the law.

2. Procedure on private ownership of land shall be determined by the law.



Article 142. Other forms of exercise by citizens of right of ownership.

1. Unless otherwise stipulated by the law, citizens shall exercise their right of ownership of the property of the legal person, created by the property of private ownership thereof or joining thereof, themselves or through their proxies.

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Chapter Twelve  
Property of Foreign Citizens, Legal Persons, Foreign State and  
International Organizations

Article 149. Property of foreign citizens.

1. Foreign citizens are entitled to own the objects of ownership within the territory of Mongolia as the Mongolian citizens, unless otherwise provided for by the law of Mongolia and international treaties of Mongolia.

2. Provisions of section 1 of this Article shall also be applied to stateless persons.

Article 150. Property of foreign legal persons.

1. Foreign legal persons are entitled to own the objects of ownership within the territory of Mongolia for the purposes of conduction of their activities, permitted under the conditions and procedures set forth in the law of Mongolia and international treaties of Mongolia.

Article 151. Property of international organizations.

1. International organizations shall enjoy the right to own the objects of ownership needed for carrying out their activities within the territory of Mongolia, under the law of Mongolia and international treaties of Mongolia

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## PART THREE GENERAL PRINCIPLES OF OBLIGATIONS

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Chapter Fifteen  
Remedies

## Article 179. Form of Remedies

1. If it is provided by the law or contract, performance of obligation shall be secured by the fine or pledge or earnest or suretyship and the warranty.
2. A void contract for remedies shall not serve as the grounds for making a principal obligation void.
3. Where a principal obligation is void, then the contract shall have no legal force.

## Article 180. Fine

1. A fine shall be a sum of money which one party undertakes to pay to the other party for non-performance or improper performance of its obligations under the law or contract.
2. A contract on fine shall be concluded in writing irrespective of the form of contract of a principal obligation. A contract which has not complied with this requirement shall be void.
3. A fine shall have form of penalty or of compensation for losses.
4. A penalty shall be a fine due by a debtor which has not performed its obligation or has performed improperly its obligation to a creditor, and which amount is stipulated in advance under the law or contract or is calculated on the basis of the certain percentage of the sum of the non-performed or improperly performed obligation.
5. A compensation of losses shall be a fine due by a debtor to a creditor, and which is charged for each day of delay, provided by the law or contract and is calculated on the basis of the percentage of the sum of the non-performed obligation.
6. The total amount of fine may not exceed 50 percent of the sum of the non-performed obligation.
7. Where the contract provides for the payment of fine, the damage caused due to non-performed or improper performance may be recovered

in the amount exceeding that of fine or the fine or compensation for losses may be paid at the choice of a creditor. However, subject to law or contract, the compensation for losses as well as fine may be paid in full.

8. When a debtor is not liable for non-performance or improper performance (Article 191 of this Code), then the creditor shall not be entitled to require the payment of fine.

9. Where the amount of fine, stipulated in the contract, the court or arbitration tribunal shall be entitled to reduce the amount of fine.

#### Article 181. Pledge

1. Unless otherwise provided by the law, the property or properly right may be an object of pledge.

2. The procedure for the creation of security interest in the apartment buildings and other immovable property shall be determined by the law.

3. Where a debtor has not performed his obligation secured by pledge under the law or contract, then a creditor-pledge shall be entitled to have recovered its damage out of the price of the pledged property in the first order than the other creditors.

4. A pledgor may be debtor or other person.

5. A pledgor shall be an owner of the pledged property.

6. Unless otherwise provided by the law, an obligation may be performed and the damage and fine due to pledge may be compensated for by the pledged property.

7. A contract for pledge shall contain the name, place of residence (business) of parties thereto, obligation secured by pledge and its size, period for performance and the lost and price as well as the location of the pledged property.

8. A contract for pledge shall be concluded in writing. A contract for pledge of an immovable property is subject to registration with the Registrar of Immovable Property. A contract for pledge which has violated the provisions of this Article shall be void.

9. When an immovable property is pledged, the right of pledge shall arise from the date of registration of contract, or in case of other property, upon

its transfer to the pledgee. If the contract provides for non-transfer of property to the pledgee, then the right of pledge shall arise upon the conclusion of contract.

10. Unless otherwise provided by the law or contract, the pledged property shall be transferred to a pledgee. A pledgee - transferee shall be obliged to ensure the security and protection of such a property.

11. A pledgee is entitled to claim the pledged property which is out of the preservation by pledgee or by debtor in charge of its preservation.

12. Where the right of ownership by a pledgor of the pledged property has been assigned to another person, then the right of pledge shall not be terminated.

13. Unless otherwise provided by the law or contract, a pledgee shall not be entitled to use the pledged property.

14. If a pledgee can not prove that loss of or damage to the property, transferred thereto have not been due to his fault, than he shall be liable therefore.

15. Unless otherwise provided by the law, the claims by a creditor shall be satisfied out of the price of the pledged property upon a court order.

16. Where the pledged or insured property have been lost, then a pledgee shall be entitled to have recovered the damage thereto out of the amount of insurance compensation in the first order.

17. Where the proceeds of sale of the pledged property have not satisfied fully the claims by a pledgee, then the pledgee shall be entitled to compensate for due part of damages by the other property of the debtor unless otherwise provided by the law or contract. In such case, the right of pledge shall not serve as the ground for claim by the other creditors for recovery of damages thereto in the first order.

18. The right of pledge shall be terminated in the following cases:

18.1. termination of obligation secured by pledge;

18.2. loss of pledged property;

18.3. acquisition by pledgee of the right of ownership of the pledged property;

18.4. sale of pledged property by execution.

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## PART SEVEN INTERNATIONAL PRIVATE LAW

### Chapter Fifty-Eight

#### Civil Law Capacities of Foreign Citizens, Stateless persons and Foreign Legal Entities, Application of Foreign Law and International Treaty

##### Article 423. International Treaty and Agreement

1. Mongolia shall conclude international treaties on the basis of the general principles of the Civil Code of Mongolia. However, if a international treaty of Mongolia provides for other provision than those of the Civil Code, then such provisions of international treaty shall prevail.

##### Article 424. Grounds for Application of Foreign Law

1. A foreign law or internationally recognized usage which are not contrary to the Mongolian Law and International treaty of Mongolia may be applied in the civil law relations.

##### Article 425. Ascertaining Foreign Law

1. In the application of foreign law, the courts and arbitration bodies shall ascertain the content of rules in conformity with its official interpretation and practice thereof.

2. The court and arbitration bodies may approach the Ministry of Justice of Mongolia or other competent authorities in Mongolia or abroad for legal assistance and interpretations, and Invite experts with a view of ascertaining the contents of rules of foreign law.

3. Parties are entitled to provide documents certifying the contents of appropriate rules of foreign law.

4. If the rules of foreign law are not ascertained due to appropriate measures taken under this Article. then the Mongolian Law shall be applied.

##### Article 426. Restriction on Application of Foreign Law

1. Should an application of foreign law contradict to the Mongolian Law and international treaty of Mongolia, then it shall not be applied. In this

case, the Mongolian law shall be applied.

#### Article 427. Statute of Limitation

1. The statute of limitation shall be determined in conformity with the Mongolian Law and international treaty of Mongolia being applied in the regulation of relations in question.
2. The Mongolian law may define the exceptions for statute of limitation.

#### Article 428. Civil Law Capacity and Legal Capacity of Foreign Citizen and Stateless Persons

1. The foreign citizens and stateless persons shall have the similar civil law capacity to that of citizens of Mongolia. Their civil status may be restricted by the Mongolian law.
2. A legal capacity of foreign citizen shall be determined by the law of the State which such citizens are nationals.
3. A legal capacity of stateless persons shall be determined the law of the State where they have a permanent residence.
4. A legal capacity of foreign citizens regarding their contractual obligations and torts occurred on the territory of Mongolia shall be determined by the Mongolian law.
5. Deprivation of legal capacity or limitation of legal capacity of any persons on the territory of Mongolia shall be determined by the Mongolian law.
6. Declaration of any person to have been missing or to have deceased on the territory of Mongolia shall be determined by the Mongolian law.

#### Article 429. Legal Capacity of Foreign Legal Entities

1. The determination of a legal capacity of foreign legal entities under the law of the State which such entities are nationals shall be recognized by Mongolia.
2. A foreign legal entity entering into transactions may not refer to the restrictions which are not provided by the Mongolian law.

### Article 430. Reciprocal Restriction of Law Capacity of Citizen

1. In case of special restriction by a foreign state of the civil law capacity of citizens and legal entities of Mongolia, then the Government of Mongolia may establish an reciprocal restriction in respect of the civil law capacities of citizens and legal entities of such a State.

### Article 431. Protection of Non Property and Personal Rights

1. In the protection of non-property and personal rights, the law of the State where the event and other circumstances justifying a claim have occurred or that where the plaintiff has its place of residence business shall be applied subject to choice thereby.

### Article 431. Right of Ownership

1. A right of ownership of property shall be determined as follows:

1.1. right of ownership of property - by the law of the State where such a property is situated;

1.2. right of ownership of property subject to registration - by the law of the State where such a property was registered;

1.3. arising and termination of right of ownership of property - by the law of the State where the property in question is situated at the moment of the occurrence of events and other circumstances justifying such arising and termination of right of ownership unless otherwise provided by the Mongolian law.

1.4. acquisition and termination of right of ownership of the property which is a subject of the transactions - by the governing law of such a transaction unless otherwise agreed by the parties,

1.5. right of ownership of the property in route under the foreign trade transactions - by the law of the State from which such a property is dispatched unless otherwise agreed by the parties;

1.6. right of the owner who have filed a claim for the protection of its right of ownership - by the law of the State where such a property is situated or the law of the State where it is registered or the law of the State which court an action is brought to, subject to choice by an owner of any of them.

#### Article 433. Transactions and Authorization

1. A form of transaction shall be determined by the law of the State where such transaction was made.
2. Transactions which were made abroad and meet the requirements of the Mongolian Law may not be considered void due to contravention to the requirements as to form.
3. A form of transactions relating to the immovable property which is situated on the territory of Mongolia shall be determined by the Mongolian Law.
4. Determination of the place of making transactions shall be regulated by the Mongolian law.
5. Form and validity term of authorization shall be determined by the law of the State where such an authorization was issued. If an authorization meets the requirements of the Mongolian law, then it may not be considered due to contravention to the requirements as to form.

#### Article 434. Rights and Responsibilities of Parties to Foreign Trade Transactions

1. Rights and obligations of parties to foreign trade transactions shall be determined by the law of the State, designated under such transactions or any future agreements made by parties thereafter.
2. If parties did not designate a governing law as provided for in Section 1 of this Article, then such a law shall be determined by the law of the State where the following parties have place of residence (place of business) or carry out the main business activities:
  - 2.1. in respect of contract for sale - by the law of seller;
  - 2.2. in respect of contract for lease - by the law of lessor;
  - 2.3. in respect of contract for deposit - by the law of depository;
  - 2.4. in respect of contract for commission - by the law of commission agent;
  - 2.5. in respect of contract of agency - by the law of commission agent;



2.6. in respect of contract for carriage - by the law of carrier;

2.7. in respect of insurance contract - by the law of insured;

2.8. in respect of contract for loan - by the law of lender;

2.9. in respect of contract for gift - by the law of donor;

2.10. in respect of contract of suretyship - by the law of surety;

2.11. in respect of contract for pledge - by the law of pledger.

3. Contracts for production cooperation or specialization or cooperation or for civil engineering and installment work, and other works shall be governed the law of the State where such activities are carried out or outcome of such contracts is occurring unless otherwise agreed by the parties thereto.

4. A joint venture agreement involving foreign legal entities and citizens shall be governed the law of the State where such a joint venture enterprise has its place of business.

5. A contract concluded as result of security transactions and auction sales shall be governed by the law of the state where such security transactions were made or auctions sales were conducted.

6. Rights and obligations of parties to contracts not provided for in Sections 1, 2, 3 and 4 of this Article shall be determined by the law of the State where the party performing the main obligations under such contracts has its place of residence (place of business) or carries out its main business activities.

7. Unless otherwise agreed by the parties, in respect of acceptance of performance, reference shall be made to the law of the State where such an acceptance is made.

#### Article 435. Obligations for Torts

1. Rights and obligations of parties arising out of torts thereby shall be determined by the law of the State where the events and other circumstances justifying claims for recovery of such damages have occurred.

2. If the parties to obligations for torts which events have occurred abroad are citizens or legal entities of Mongolia, then their rights and obligations

shall be determined by the Mongolian Law.

Article 436. Governing law for Inheritance

1. The inheritance relations shall be regulated by the law of the State where the person to be inherited had his/her last permanent place of residence.
2. The legal capacity of the person to be inherited, form of testament, making of testament and its change shall be determined by the law of the State where the person to be inherited had his/her place permanent residence at the moment of making such testament or its change. However, if the making of testament or its change are fit for the requirements of the law of the place of its making and those of the Mongolian law, then such testament and its change shall not be considered invalid only on the grounds of contravention to the requirements as to form.
3. Inheritance of an immovable property situated in Mongolia is subject only to Mongolian law. In the testament of an immovable property situated in Mongolia, the making of testament and its form as well as its change shall be governed by the Mongolian law.

Chairman of State Great Hural N. Bagabandi.

**APPENDIX D**  
**THE CONSTITUTION OF MONGOLIA**

We, the people of Mongolia:

Strengthening the independence and sovereignty of the nation,

Cherishing human rights and freedoms, justice, and national unity,

Inheriting the traditions of national statehood, history, and culture,

Respecting the accomplishments of human civilization,

And aspiring toward the supreme objective of building a humane, civil and democratic society in the country

Hereby proclaim the Constitution of Mongolia.

Chapter One  
Sovereignty of Mongolia

Article 1

1. Mongolia is an independent, sovereign republic.
2. The fundamental purpose of state activity is the ensurance of democracy, justice, freedom, equality, and national unity and respect of law.

Article 2

1. By its state structure, Mongolia is a unitary State.
2. The territory of Mongolia is divided into administrative units only.

Article 3

1. State power is vested in the people of Mongolia. The people exercises it through direct participation in state affairs and through representative bodies of state power elected by them.
2. Illegal seizure of state power or attempted seizure are prohibited.

Article 4

1. Territorial integrity and frontiers of Mongolia are inviolable.
2. The frontiers of Mongolia are safeguarded by law.
3. Stationing of foreign troops in the territory of Mongolia or allowing them to cross the state borders for the purpose of passing through the

country's territory is prohibited unless permitted by an appropriate law.

#### Article 5

1. Mongolia shall have an economy based on different forms of property which takes into account universal trends of world economic development and national specifics.
2. The State recognizes all forms of both public and private property and shall protect the rights of the owner by law.
3. The owner's rights shall be limited exclusively by due process of law.
4. The State shall regulate the economy of the country with a view to ensure the nation's economic security, the development of all modes of production and social development of the population.
5. The livestock is national wealth and be protected by the state.

#### Article 6 Public Wealth, Restrictions for Foreigners

1. The land, its subsoil, forests, water, fauna, and flora and other natural resources are subject to national sovereignty and state protection.
2. The land except that in citizen's private ownership, as well as the subsoil with its mineral wealth, forests, water resources, and game is the property of the State.
3. The State may give for private ownership plots of land except pastures and areas under public and special use, only to the citizens of Mongolia. This provision does not apply to the ownership of the subsoil thereof. Citizens are prohibited to transfer the land in their possession to foreigners and stateless persons by way of selling, bartering, donating, or pledging as well as transferring to others for exploitation without permission from competent state authorities.
4. The State has the right to hold landowners responsible regarding the manner the land is used, to exchange or take it over with compensation on the grounds of special public need, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection, or national security.
5. The State may allow foreign nationals, legal persons, and stateless persons to lease land for a specified period of time under conditions and pro-

cedures as provided by law.

#### Article 7 Culture

1. The historical, cultural, scientific, and intellectual heritage of the Mongolian people is under the protection of the state.
2. Intellectual values produced by the citizens are the property of their authors and the national wealth of Mongolia.

#### Article 8 Language

1. The Mongolian language is the official language of the State.
2. Paragraph (1) does not affect the right of national minorities of other tongues to use their native languages in education and communication and in the pursuit of cultural, artistic, and scientific activities.

#### Article 9 Church

1. The State shall respect the Church and the Church shall honor the State.
2. State institutions may not engage in religious activities and the Church may not pursue political activities.
3. The relationship between the State and the Church is regulated by law.

#### Article 10 Foreign Policy, Treaties

1. Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
2. Mongolia fulfills in good faith its obligations under international treaties to which it is a Party.
3. The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.
4. Mongolia may not abide by any international treaty or other instruments incompatible with its Constitution.

## Article 11 Security, Armed Forces

1. It is the duty of the State to secure the country's independence and ensure national security and public order.
2. Mongolia maintains armed forces for self-defense. The structure and organization of the armed forces and rules of military service are determined by law.

## Article 12 State Symbols

1. The symbols of the independence and sovereignty of Mongolia are the State Emblem, Banner, Flag, Seal, and Anthem.
2. The State Emblem, Banner, Flag, and Anthem express the historical tradition, aspiration, unity, justice, and the spirit of the people of Mongolia.
3. The State Emblem is of circular shape with the white lotus serving as its base and the "Never-ending Tumen Nasan" pattern forming its outer frame. The main background is of blue color signifying the eternal blue sky, the Mongols traditional sanctity. In the center of the Emblem, a combination of the Precious Steed and the Golden Soyombo sign is depicted as an expression of the independence, sovereignty and spirit of Mongolia. In the upper part of the Emblem the Triple Gem sign symbolizes the past, the present and the future. In the lower part of the Emblem the sign of the Wheel entwined with the silk scarf Hadag in an expression of reverence and respect, symbolizes continued prosperity. It is placed against the background of a hill pattern conveying the notion of "Mother Earth".
4. The traditional Great White Banner of the unified Mongolian State is a state ceremonial attribute.
5. The State Flag is a rectangle divided vertically into three equal parts colored red, blue, and red. The blue color of the center of the flag symbolizes the eternal blue sky and the red color on both sides symbolizes progress and prosperity. The Golden Soyombo sign is depicted on the red stripe nearest to the flag pole. The ratio of the width and length of the Flag is one to two.
6. The State Seal, having a lion-shaped handle, is of a square form with the state Emblem in the center and the word "Mongolia" inscribed on its sides. The President is the holder of the State Seal.

7. The procedure for the ceremonial use of the State symbols and the text and melody of the State Anthem is prescribed by law.

#### Article 13 Capital

1. The capital of the State is the city in which the state supreme bodies permanently sit. The capital city of Mongolia is the city of Ulaanbaatar.

2. The legal status of the capital city is determined by law.

### Chapter Two Human Rights and Freedoms

#### Article 14 Equality, Right to Personality

1. All persons lawfully residing within Mongolia are equal before the law and the courts.

2. No person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, property, occupation or post, religion, opinion, or education. Everyone is a person before the law.

#### Article 15 Citizenship, Extradition

1. The grounds and procedure for Mongolian nationality, acquisition, or loss of citizenship may be defined only by law.

2. Deprivation of Mongolian citizenship, exile, or extradition of citizens of Mongolia are prohibited.

#### Article 16 Citizen's Rights

1. The citizens of Mongolia are enjoying the following rights and freedoms:

1.1 The right to life. Deprivation of human life is strictly prohibited unless capital punishment as constituted by Mongolian penal law for the most serious crimes is imposed as final decision by a competent court.

1.2 The right to healthy and safe environment and to be protected against environmental pollution and ecological imbalance.

1.3 The right to fair acquisition, possession, and inheritance of movable and immovable property. Illegal confiscation and requisitioning of the

private property of citizens are prohibited. If the State and its bodies appropriate private property on the basis of exclusive public need, they may only do so with due compensation and payment.

1.4 The right to free choice of employment, favorable conditions of work, remuneration, rest, and private enterprise. No one may be unlawfully forced to work.

1.5 The right to material and financial assistance in old age, disability, childbirth, and childcare and in other cases as provided by law.

1.6 The right to the protection of health and medical care. The procedure and conditions of free medical aid are determined by law.

1.7 The right to education. The state provides basic general education free of charge. Citizens may establish and operate private schools if these meet the requirements of the State.

1.8 The right to engage in creative work in cultural, artistic, and scientific fields and to benefit thereof. Copyrights and patents are protected by law.

1.9 The right to take part in the government of the country directly or through representative bodies. The right to elect and to be elected to State bodies. The right to elect is enjoyed from the age of eighteen years and the age eligible for being elected is determined by law according to the requirements in respect of the bodies or posts concerned.

1.10 The right to freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and opinion. Political parties and other mass organizations shall uphold public order and state security, and abide by law. Discrimination and persecution of a person for joining a political party or other associations or for being their member are prohibited. Party membership of some categories of state employees may be suspended.

1.11 Men and women enjoy equal rights in political, economic, social, and cultural fields as well as in marriage. Marriage is based on the equality and mutual consent of the spouses who have reached the age determined by law. The State protects the interests of the family, motherhood, and the child.

1.12 The right to submit a petition or a complaint to State bodies and officials. The State bodies and officials are obliged to respond to the petitions or complaints of citizens in conformity with law.



1.13 The right to personal liberty and safety. No one may be searched, arrested, detained, persecuted, or restricted of liberty save in accordance with procedures and on grounds determined by law. No one may be subjected to torture, inhuman, cruel, or degrading treatment. Where a person is arrested his or her family and counsel shall be notified within a period of time established by law of the reasons for the arrest. Privacy of citizens, their families, correspondence, and homes are protected by law.

1.14 The right to appeal to the court for protection if one considers the rights or freedoms spelt out by the Mongolian law or an international treaty to have been violated;

- to be compensated for the damage illegally caused by others;
- not to testify against oneself, one's family, parents, or children;
- to defense;
- to receive legal assistance;
- to have evidence examined;
- to fair trial;
- to be tried in one's presence;
- to appeal against a court decision;
- to seek pardon.

Compelling to testify against oneself is prohibited. Every person is presumed innocent until proven guilty by a court by due process of law. The penalties imposed on the convicted may not be applicable to his or her family members and relatives.

1.15 Freedom of conscience and religion.

1.16 Freedom of thought, opinion, expression, speech, press, and peaceful assembly. Procedures for organizing demonstrations and other assemblies are determined by law.

1.17 The right to seek and receive information except that which the state and its bodies are legally bound to protect as secret. In order to protect human rights, dignity, and reputation of persons and to ensure national defense, security, and public order, the information which is not subject to disclosure must be classified and protected by law.

1.18. The right to freedom of movement and residence within the country, to travel and reside abroad, and to return home to the country. The right to travel and reside abroad may be limited exclusively by law for the purpose of ensuring the security of the country and population and protecting public order.

### Article 17 Citizen's Duties

1. Citizens of Mongolia, while upholding justice and humanism, shall fulfill in good faith the following basic duties:

1.1 to respect and abide by the Constitution and other laws;

1.2 to respect dignity, reputation, rights, and legitimate interests of others;

1.3 to pay taxes levied by law;

1.4 to defend the motherland and serve in the army according to law.

2. It is a sacred duty for every citizen to work, protect his or her health, bring up and educate his or her children and to protect nature and the environment.

### Article 18 Foreigner's Rights and Restrictions

1. The rights and duties of aliens residing in Mongolia are regulated by Mongolian law and by treaties concluded with the state of the person concerned.

2. Mongolia adheres to the principle of reciprocity in determining the rights and duties of foreign nationals in an international treaty being concluded with the country concerned.

3. The rights and duties of stateless persons within the territory of Mongolia is determined by the Mongolian law.

4. Aliens or stateless persons persecuted for their convictions or for political or other activities pursuing justice, may be granted asylum in Mongolia on the basis of their well-founded requests.

5. In allowing the foreign nationals and stateless persons under the jurisdiction of Mongolia to exercise the basic rights and freedoms provided for in Article 16, the State of Mongolia may establish necessary restrictions upon the rights other than the inalienable rights spelt out in international instruments to which Mongolia is a Party, out of the consideration of ensuring the security of the country and population, and public order.

## Article 19 Responsibility, Restrictions

1. The State is responsible to the citizens for the creation of economic, social, legal, and other guarantees ensuring human rights and freedoms, for the prevention of violations of human rights and freedoms, and restoration of infringed rights.
2. In case of a state of emergency or war, the human rights and freedoms as defined by the Constitution and other laws are subject to limitation only by a law. Such a law may not affect the right to life, the freedom of thought, conscience, and religion, as well as the right not to be subjected to torture or inhuman and cruel treatment.
- 3 In exercising one's rights and freedoms, one may not infringe the national security or rights and freedoms of others or violate public order.

## Chapter Three Structure of the State

### Part I The Legislature

#### Article 20 Legislative Power

1. The National Parliament is the highest organ of state power, and the supreme legislative power is vested only in the National Parliament.

#### Article 21 One Chamber, Election

1. The National Parliament has one chamber and consists of 76 members.
2. The members of the National Parliament are elected by citizens qualified to vote, on the basis of universal, free, and direct suffrage by secret ballot for a term of four years.
3. Citizens of Mongolia who have reached the age of twenty-five years and are eligible for elections may be elected to the National Parliament.
4. The procedure of the election of members of the National Parliament is determined by law.

#### Article 22 Continuing Parliament

1. If regular elections of the National Parliament cannot be held due to extraordinary circumstances such as sudden calamities occurred in the

whole or in part of the country, the National Parliament retains its power till the extraordinary circumstances cease to exist and the newly elected members of the National Parliament are sworn in.

2. The National Parliament may decide on its dissolution if not less than two thirds of its members consider that the National Parliament is unable to carry out its mandate, or if the President, in consultation with the Chairman of the National Parliament, proposes to do so for the same reason. In case of such a decision, the National Parliament exercises its powers until the newly elected members of the National Parliament are sworn in.

#### Article 23 Responsibility, Mandate

1. A member of the National Parliament is an envoy of the people and represents and upholds the interests of all the citizens and the state.

2. The mandate of a member of the National Parliament begins with an oath taken before the State Emblem and expires when newly elected members of the National Parliament are sworn in.

#### Article 24 Chairmen

1. Chairman and Vice-Chairman of the National Parliament are nominated and elected from among the members of the National Parliament by secret ballot.

2. The term of office of the Chairman and Vice-Chairman of the National Parliament is four years. They can be relieved of or removed from their posts before the expiry of their terms for reasons defined by law.

#### Article 25 Competence

1. The National Parliament may consider, at its initiative, any issue pertaining to domestic and foreign policies of the country, and retains within its exclusive competence the following questions and decisions thereon:

1.1. to enact laws and make amendments to them;

1.2. to determine the basis of the domestic and foreign policies of the State;

1.3. to set and announce the date of elections of the President and the National Parliament and its members;

1.4. to determine and change the structure and composition of the Standing Committees of the National Parliament, the Government, and other bodies directly accountable to it according to law;

1.5. to pass a law recognizing the full powers of the President after his or her election and to relieve or remove the President;

1.6. to appoint, replace, or remove the Prime Minister, members of the Government, and other bodies responsible and accountable to the National Parliament as provided for by law;

1.7. to define the State's financial, credit, tax, and monetary policies, to lay down the guidelines for the country's economic and social development, to approve the Government's program of action, the State budget, and the report on its execution;

1.8. to supervise the implementation of laws and other decisions of the National Parliament;

1.9. to define the State borders;

1.10. to determine the structure, composition, and powers of the National Security Council;

1.11. to approve and change the administrative and territorial division of the country at the suggestion by the Government;

1.12. to determine the legal basis of the system, structure, and activities of local self-governing and administrative bodies;

1.13. to institute titles, orders, medals, and higher military ranks, to determine the table of ranks in some special fields of state service;

1.14. to issue acts of amnesty;

1.15. to ratify and denounce international agreements to which Mongolia is a Party and to establish and sever diplomatic relations with foreign States at the suggestion of the Government;

1.16. to hold national referendums, to verify the validity of a referendum in which the majority of eligible citizens has taken parts, and to consider the question which has obtained a majority vote as decided;

1.17. to declare a state of war in case the sovereignty and independence

of the state are threatened by armed actions on the part of a foreign power, and to abate it; and

1.18 to declare a state of emergency or a state of war in the whole or some parts of the country in special circumstances described in Paragraphs (2) and (3), and to approve or nullify the President's decree to that effect.

2. Under the following extraordinary circumstances, the National Parliament may declare a state of emergency to eliminate the consequences thereof and to restore the life of the population and society to norm, if:

2.1. natural disasters or other unforeseen dangers occur which threaten or may threaten directly the life, health, well-being, and security of the population in the whole or a part of the country's territory;

2.2. public authorities are not able to cope, within legal limits, with public disorders caused by organized, violent, illegal actions of an organization or a group of people threatening the constitutional order and the existence of the legitimate social system.

3. The National Parliament may declare a state of war if public disorders in the whole or a part of the country's territory result in an armed conflict or create a real threat of an armed conflict, or if there is an armed aggression or a real threat of such an aggression from the outside.

4. The other powers, structure, and the procedures of the National Parliament are defined by law.

#### Article 26 Initiative

1. The President, members of the National Parliament, and the Government have the right to legislative initiative.

2. Citizens and other organizations may forward their suggestions on draft laws to those entitled to initiate a law.

3. National laws are subject to official promulgation through publication and, if the law does not provide otherwise, enter into force 10 days after the day of publication.

#### Article 27 Sessions, Quorum, Majority

1. The National Parliament exercises its powers through its sessions and

other organizational forms.

2. Regular sessions of the National Parliament are to be held once in six months and do not last less than 75 working days on each occasion.
3. Extraordinary sessions may be convened at the demand of more than one third of the members of the National Parliament, or at the initiative of the President and the Chairman of the National Parliament.
4. The President convokes constituent sessions of the National Parliament within 30 days following elections. Other sessions are convoked by the Chairman of the National Parliament.
5. In case of the proclamation by the President of a state of emergency or war, the National Parliament convenes for an extraordinary session within 72 hours without prior announcement.
6. The presence of an overwhelming majority of members of the National Parliament is required to consider a session valid, and decisions are taken by a majority of all members present if the Constitution and other laws do not provide otherwise.

#### Article 28 Standing Committees

1. The National Parliament has Standing Committees dealing with specific fields.
2. The National Parliament determines the competence, structure, and procedures of the Standing Committees.

#### Article 29 Remuneration, Incompatibility, Immunity

1. Members of the National Parliament receive remuneration from the State budget during their tenure and may not hold concurrently any posts and employment other than those assigned by law.
2. Immunity of members of the National Parliament is protected by law.
3. If a question arises that a member of the National Parliament is involved in a crime, it is considered by the session of the National Parliament to decide on the suspension of his or her mandate. If the court proves the member in question to be guilty of crime, the National Parliament shall terminate his or her membership in the legislature.

## Part II The President

### Article 30 Head of State, Eligibility, Term

1. The President is the Head of State and embodiment of the unity of the people.
2. An indigenous citizen who has attained the age of forty-five years and has permanently resided as a minimum for the last five years in Mongolia, is eligible for election to the post of President for a term of four years.

### Article 31 Elections

1. Presidential elections are conducted in two stages.
2. Political parties which have obtained seats in the National Parliament nominate individually or collectively presidential candidates, one candidate for each party or coalition of parties.
3. At the primary stage of the elections, citizens eligible to vote participate in electing the President on the basis of universal, free, and direct suffrage by secret ballot.
4. The National Parliament considers the candidate who has obtained a majority of all votes cast in the first voting as elected President and passes a law recognizing his or her mandate.
5. If none of the candidates obtains a majority vote in the first round, second voting takes place involving the two candidates who have obtained the largest number of votes in the first round. The candidate who wins a majority of all votes cast in the second ballot is considered elected President and a law recognizing his or her mandate is passed by the National Parliament.
6. If neither of the candidates wins in the second ballot, Presidential elections are held anew.
7. The President can be re-elected only once.
8. The President cannot be a member of the National Parliament or the Government and cannot concurrently hold the post of the Prime Minister or any other posts and pursue any occupation not relating to his duties assigned by law. If the President holds another office or a post he or she is relieved of it from the date on which he or she is inaugurated.



### Article 32 Oath, Continuing Presidency

1. The mandate of the President becomes effective with an oath taken by him or her and expires with an oath taken by the newly elected President.
2. Within 30 days after the election, the President takes the following oath before the National Parliament: "I swear that I will guard and defend the independence and sovereignty of Mongolia, freedom of the people and national unity, and that I will uphold and observe the Constitution and faithfully perform the duties of the President".

### Article 33 Powers

1. The President enjoys the following prerogative rights:
  - 1.1. to veto, partially or wholly, laws and other decisions adopted by the National Parliament. The laws or decisions remain in force if two-thirds of the members of the National Parliament present do not accept the President's veto;
  - 1.2. to propose to the National Parliament the candidature for the appointment to the post of Prime Minister in consultation with the majority party or parties in the National Parliament if none of them has majority of seats, as well as to propose to the National Parliament the dissolution of the Government;
  - 1.3. to instruct the Government on issues within his competence. If the President issues a relevant decree it becomes effective upon signature by the Prime Minister;
  - 1.4. to represent the Mongolian State in foreign relations and, in consultation with the National Parliament, to conclude international treaties on behalf of Mongolia;
  - 1.5. to appoint and recall heads of plenipotentiary missions to foreign countries in consultation with the National Parliament;
  - 1.6. to receive the Letters of Credence or Recall of Heads of diplomatic missions of foreign states;
  - 1.7. to confer state titles and higher military ranks and award orders and medals;
  - 1.8. to grant pardon;

1.9. to decide matters related to granting and withdrawing Mongolian citizenship and granting asylum;

1.10. to head the National Security Council;

1.11. to declare general or partial conscription;

1.12. to declare a state of emergency or a state of war on the whole or a part of the national territory and to order the deployment of armed forces when extraordinary circumstances described in Article 25 (2) and (3) arise and the National Parliament concurrently in recess, cannot be summoned at short notice. The National Parliament considers within 7 days the Presidential decree declaring a state of emergency or a state of war and approves or disapproves it. If the National Parliament does not take decision on the matter, the Presidential decree becomes null and void.

2. The President is the Commander-in-Chief of the armed forces of Mongolia.

3. The President may address messages to the National Parliament or to the people, he may at his own discretion attend sessions of the National Parliament, report on and submit proposals concerning vital issues of domestic and foreign policies of the country.

4. Other specific powers may be vested in the President only by law.

#### Article 34 Presidential Decrees

1. The President, within his powers, issues decrees in conformity with the law.

2. If a Presidential decree is incompatible with law, the President himself or the National Parliament invalidates it.

#### Article 35 Responsibility

1. The President is responsible to the National Parliament.

2. In case of a violation of the Constitution or abuse of power in breach of his oath, the President may be removed from his post on the basis of the findings of the Constitutional Court by an overwhelming majority of members of the National Parliament present and voting.

### Article 36 Protection

1. The person, residence, and transport of the President is inviolable.
2. Dignity and immunity of the President are protected by law.

### Article 37 Replacement

1. In the temporary absence of the President, his full powers are exercised by the Chairman of the National Parliament.
2. In the event of the resignation, death, or voluntary retirement of the President, his full powers are exercised by the Chairman of the National Parliament pending the inauguration of the newly elected President. In such a case, the National Parliament announces and holds Presidential elections within four months.
3. The procedure of the discharge of Presidential duties by the Chairman of the National Parliament is determined by law.

## Part III The Government

### Article 38 Powers

1. The Government is the highest executive body of the State.
2. In discharging the duty of directing economic, social, and cultural development of the country in observance of State laws, the Government exercises the following powers:
  - 2.1. to organize and ensure nation-wide implementation of the Constitution and other laws;
  - 2.2. to work out a comprehensive policy on science and technology, guidelines for economic and social development, the State budget, credit and fiscal plans, to submit these to the National Parliament, and to execute decisions taken thereon;
  - 2.3. to elaborate and implement comprehensive measures on sectoral, intersectoral, as well as regional development;
  - 2.4. to undertake measures on the protection of the environment and on the rational use and restoration of natural resources;

2.5. to provide efficient leadership of central state administrative bodies and to direct the activities of local administrations;

2.6. to strengthen the country's defense capabilities and to ensure national security;

2.7. to take measures for the protection of human rights and freedoms, enforcement of public order, and prevention of crime;

2.8. to realize the State foreign policy;

2.9. to conclude and implement international treaties with the consent of and subsequent ratification by the National Parliament as well as to conclude and abrogate intergovernmental treaties.

3. The specific powers, structure, and procedure of the Government are determined by law.

#### Article 39 Composition, Nomination, Appointment

1. The Government comprises the Prime Minister and other members.

2. The Prime Minister, in consultation with the President, submits his or her proposals on the structure and composition of the Government and on the changes in these to the National Parliament.

3. The National Parliament considers the candidatures proposed by the Prime Minister one by one and take decision on their appointment.

#### Article 40 Term, Continuing Government

1. The term of the mandate of the Government is four years.

2. The terms of office of the Government start from the days of the appointment of the Prime Minister by the National Parliament and terminate upon the appointment of a new Prime Minister.

#### Article 41 Responsibility

1. The Prime Minister leads the Government and is responsible to the National Parliament for the implementation of state laws.

2. The Government is accountable for its work to the National Parliament.

#### Article 42 Immunity

1. The personal immunity of the Prime Minister and other members of the Government are protected by law,

#### Article 43 Resignation, Dissolution

1. The Prime Minister may tender his resignation to the National Parliament before the expiry of his terms of office if he considers that the Government is unable to exercise its powers.

2. The Government steps down in its entirety upon the resignation of the Prime Minister or if half of the members of the Government resign at the same time.

3. The National Parliament considers the matter and makes a final decision within 15 days after taking initiative to dissolve the Government or receiving the President's proposal or the Prime Minister's statement on resignation.

4. The National Parliament considers and takes decision on the dissolution of the Government if not less than one fourth of the members of the National Parliament formally propose the dissolution of the Government.

#### Article 44 Vote of Confidence

1. If the Government submits a draft resolution requesting a vote of confidence, the National Parliament proceeds with the matter in accordance with Article 43 (3).

#### Article 45 Resolutions, Ordinances

1. The Government, in conformity with law and regulations, issues resolutions and ordinances which are signed by the Prime Minister and the Minister concerned.

2. If these resolutions and ordinances are incompatible with laws and regulations, the Government itself or the National Parliament invalidates them.

#### Article 46 Public Office

1. Ministries and other government offices are constituted in accordance with the law.
2. State employees must be Mongolian nationals. They strictly abide by the Constitution and other laws and work for the benefit of the people and in the interests of the State.
3. The working conditions and social guarantees of state employees are determined by law.

#### Part IV The Judiciary

##### Article 47 Courts

1. The judicial power is vested exclusively in courts.
2. Unlawful institution of courts under and circumstances and exercise of judicial power by any other organization but courts is prohibited.
3. Courts are instituted solely under the constitution and other laws.

##### Article 48 Court Organization

1. The judicial system consists of the Supreme Court, provincial and capital city courts, Region, inter-region, and district courts. Specialized courts such as criminal, civil, and administrative courts may be formed. The activities and decisions of these specialized courts are exclusively under the supervision of the Supreme Court.
2. The structure of courts and the legal basis of their activities are defined by law.
3. The courts are financed by the State budget. The State ensures economic guarantee of the courts activities.

##### Article 49 Judges

1. Judges are independent and subject only to the law.
2. Neither a private person nor any civil officer - be it the President, members of the National Parliament, or the Government, officials of political parties, or other voluntary organizations - may not interfere with

the judges' exercise of their duties.

3. A General Council of Courts has the function of ensuring the independence of the judiciary.

4. The General Council of Courts, without interfering in the activities of courts and judges, deals exclusively with the selection of judges from among lawyers, protection of their rights, and other matters pertaining to the ensurance of conditions guaranteeing the independence of the judiciary.

5. The structure and procedures of the General Council of Courts are defined by law.

#### Article 50 Supreme Court

1. The Supreme Court is the highest judicial organ and exercises the following powers:

1.1. to try at first instance criminal cases and legal disputes under its jurisdiction;

1.2. to examine decisions of lower-instance courts through appeal and supervision;

1.3. to examine and take decision on matters related to the protection of law and human rights and freedoms therein and transferred to it by the Constitutional Court and the Prosecutor General;

1.4. to provide official interpretations for correct application of all other laws except the Constitution; and

1.5. to make judgements on all other matters assigned to it by law.

2. The decision made by the Supreme Court is a final judiciary decision and binding upon all courts and other persons. If a decision made by the Supreme Court is incompatible with law, the Supreme Court itself repeals it. If an interpretation made by the Supreme Court is incompatible with a law, the latter has precedence.

3. The Supreme Court and other courts have no right to apply laws that are unconstitutional or have not been promulgated.

#### Article 51 Composition of Supreme Court

1. The Supreme Court comprises the Chief Justice and judges.
2. The President appoints the judges of the Supreme Court upon their presentation to the National Parliament by the General Council of Courts and appoints judges of other courts on the proposal of the General Council of Courts.
3. A Mongolian national of thirty-five years of age with higher education in law and a professional career of not less than 10 years may be appointed a judge of the Supreme Court. A Mongolian national of twenty-five years of age with higher education in law and a professional career of not less than 3 years may be appointed a judge of the other courts.
4. Removal of a judge of a court of any instance is prohibited except in cases he or she is relieved at his or her own request or removed by a valid court decision on the grounds provided for in the Constitution and the law on the judiciary.

#### Article 52 [Collective Decisions]

1. Courts of all instances consider and make judgement on cases and disputes on the basis of collective decision-making.
2. In passing a collective decision on cases and disputes, the courts of first instance allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law.
3. A judge alone may take decision on some cases which are specifically singled out by law.

#### Article 53 Court Language

1. Court trials are to be conducted in the Mongolian language.
2. A person who does not know Mongolian is acquainted with all the facts of the case through translation and has the right to use his or her native language at the trial.

#### Article 54 Publicity

1. Court trials are open to the public except in cases specifically singled out by law.



### Article 55 Defense, Assistance

1. The accused has a right to defense.
2. The accused is accorded legal assistance according to law and at his or her request.

### Article 56 Prosecution

1. The Prosecution exercises supervision over the inquiry into and investigation of cases and the execution of punishment, and participates in the court proceedings on behalf of the State.
2. The President appoints the Prosecutor General and his or her deputies in consultation with the National Parliament for a terms of six years.
3. The system, structure, and legal basis of the activities of the Prosecution are determined by law.

## Chapter Four Administrative and Territorial Units

### Article 57 Administrative Units

1. The territory of Mongolia is divided administratively into provinces and a capital city; provinces are subdivided into regions; regions into communities; the capital city is divided into districts and districts into neighborhoods.
2. Legal status of towns and villages located on the territories of administrative divisions is defined by law.
3. Revision of an administrative and territorial unit shall be considered and decided by the National Parliament on the basis of a proposal by a respective local parliament and local population, and with account taken of the country's economic structure and the distribution of the population.

### Article 58 Autonomy, Borderlines

1. The province, the capital city, region, and district are administrative, territorial, and socio-economic complexes with their functions and administrations provided for by law.

2. Borderlines of provinces, the capital city, regions and districts are approved by the National Parliament at the suggestion of the Government.

#### Article 59 Self-Government

1. Governance of administrative and territorial units of Mongolia is organized on the basis of the principles of both self-government and central government.

2. The self-governing bodies in province, capital city, region and district are parliaments of representatives of the citizens of the respective territory; in community and neighborhoods they are general meetings of citizens. In-between the sessions of the parliaments and general meetings, their presidiums assume administrative functions.

3. Parliaments of provinces and the capital city are elected for a term of four years. The memberships in these parliaments as well as those of regions and districts and the procedure of their election are determined by law.

#### Article 60 Governors, Continuing Government

1. State power is exercised on the territories of provinces, the capital city, regions, districts, communities and neighborhoods by the Governors of these territories.

2. Candidates for Governors are nominated by the parliaments of respective provinces, the capital city, regions, districts, communities and neighborhoods. Governors of provinces and the capital city are appointed by the Prime Minister; regional and district governors are appointed by the governors of the provinces and the capital city; governors of communities and neighborhoods are appointed by the governors of regions and districts respectively for a term of four years.

3. In case the Prime Minister and governors of higher levels refuse to appoint the gubernatorial candidates, new nominations are held in the manner prescribed in Paragraph (2). Pending the appointment of a new Governor, the previously appointed Governor exercises his or her mandate.

#### Article 61 Responsibility, Secretariats

1. While working for the implementation of the decisions of a respective Parliament, a governor, as a representative of State power, is responsible to the Government and the governor of higher instance for proper obser-

vance of national laws and fulfillment of the decisions of the Government and the respective superior body in his or her territory.

2. Governors have a right to veto decisions of their province, capital city, region, district, community and neighborhood parliaments.

3. If a parliament by a majority vote overrides the veto, the governor may tender his or her resignation to the Prime Minister or to the governor of higher instance if he or she considers that he or she is not able to implement the decision concerned.

4. Governors of provinces, the capital city, regions and districts have secretariats. The Government determines the structure and size of these offices individually or by a uniform standard.

#### Article 62 Subsidiarity

1. Local self-governing bodies - besides making independent decisions on matters of socio-economic life of the respective province, the capital city, region, district, community and neighborhood - organize the participation of the population in solving problems of national scale and that of larger territorial divisions.

2. Authorities of higher instance may not take decision on matters coming under the jurisdiction of local self-governing bodies. If law and decisions of respective superior state organs do not specifically deal with definite local matters, local self-governing bodies can decide upon them independently in conformity with the Constitution.

3. If the National Parliament and the Government deem it necessary, they may delegate some matters within their competence to the province and capital city parliaments and governors for their solution.

#### Article 63 Legality

1. Parliaments of provinces, the capital city, regions, districts, communities and neighborhood adopt resolutions and governors issue ordinances within their competence.

2. Resolutions of the parliaments and ordinances of the governors must be in conformity with law. Presidential decrees and decisions of the Government and other superior bodies are binding within their respective territories.

3. Administrative and territorial units and the powers, structure, and procedure of their governing bodies are determined by law.

## Chapter Five The Constitutional Court

### Article 64 Functions, Independence

1. The Constitutional Court is an organ exercising supreme supervision over the implementation of the constitution, making judgement on the violation of its provisions, and resolving constitutional disputes. It is the guarantee for the strict observance of the Constitution.
2. The Constitutional Court and its members in the execution of their duties are subject to the Constitution only and are independent of any organizations, officials, or anybody else.
3. The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws.

### Article 65 Membership, Term, Chairman

1. The Constitutional Court consists of 9 members. Members of the Constitutional Court are appointed by the National Parliament for a term of six years upon the nomination of three of them by the National Parliament, three by the President, and the remaining three by the Supreme Court.
2. A member of the Constitutional Court must be a Mongolian national of forty years of age and experienced in politics and law.
3. The Chairman of the Constitutional Court is elected from among 9 members for a term of three years by a majority vote of the members of Constitutional Court. He may be re-elected once.
4. If the Chairman or a member of the Constitutional Court violates law, he or she may be withdrawn by the National Parliament on the basis of the decision of the Constitutional Court and on the opinion of the institution which nominated him or her.
5. The President, members of the National Parliament, the Prime Minister, members of the Government, and members of the Supreme Court may not be nominated to serve on the Constitutional Court.

### Article 66 Proceedings

1. The Constitutional Court examines and settles constitutional disputes at the request of the National Parliament, the President, the Prime Minister, the Supreme Court, and the Prosecutor General, or on its own initiative on the basis of petitions and information received from citizens.

2. The Constitutional Court, in accordance with Paragraph (1), issues judgements to the National Parliament on:

2.1. the constitutionality of laws, decrees, and other decisions by the National Parliament and the President, as well as Government decisions and international treaties signed by Mongolia;

2.2. the constitutionality of national referendums and decisions of the central election authority on the elections of the National Parliament and its members as well as on presidential elections;

2.3. the breach of law by the President, Chairman and members of the National Parliament, the Prime Minister, members of the Government, the Chief Justice and the Prosecutor General]; and

2.4. the well-foundedness of the grounds for the removal of the President, Chairman of the National Parliament, and the Prime Minister and for the recall of members of the National Parliament.

3. If a decision submitted in accordance with Paragraph (2) No. 1) and 2) is not acceptable to the National Parliament, the Constitutional Court re-examines it and issues final judgement.

4. If the Constitutional Court decides that the laws, decrees, and other decisions of the National Parliament and the President as well as Government decisions and international treaties concluded by Mongolia are incongruous with the Constitution, those laws, decrees, instruments of ratification, and decisions in question are considered invalid.

### Article 67 Force of Decision

1. Decisions of the Constitutional Court immediately enter into force.

Chapter Six  
Amendment of the Constitution

Article 68 Initiative, Referendum

1. Amendments to the Constitution may be initiated by organization and officials enjoying the right to legislative initiative and may be proposed by the Constitutional Court to the National Parliament.
2. A national referendum on constitutional amendment may be held on the concurrence of not less than two-thirds of the members of the National Parliament. The referendum is held in accordance with the provisions of Article 25 (1) No. 16.

Article 69 Majority

1. An amendment to the Constitution is adopted by not less than three-fourths of votes of all members of the National Parliament.
2. A draft amendment to the Constitution which has twice failed to win three-fourths of votes of all members of the National Parliament is not subject to consideration until the National Parliament sits in a new composition following general elections.
3. The National Parliament may not undertake amendment of the Constitution within six months pending the next general elections.
4. Amendments which have been adopted are of the same force as the Constitution.

Article 70 Final Provisions

1. Laws, decrees, and other decisions of state bodies and activities of all other organizations and citizens must be in full conformity with the Constitution.
2. This Constitution of Mongolia enters into force at 12:00 hours on 12 Feb 1992.

